IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.1000 OF 2011

The New India Assurance Co. Ltd.,
Branch at Chandrapur, District-
Chandrapur, Through the
Divisional Manager, Dr. Ambedkar
Bhavan, 4th Floor, NECL Building,
Seminary Hills, Nagpur. .. Appellant
(Org. Non-applicant No.3)

..Versus..

1) Naganbai wd/o Vitthalrao Tajne, (Org. Applicants)
Aged about 40 years, (On R.A.)
Occupation : Household work.

2) Subhash s/o Vitthalrao Tajne,
Aged about 23 years,
Occupation : Education.

3) Ku. Kalpana d/o Vitthalrao Tajne,
Aged about 20 years,
Occupation : Education.

4) Ku. Vaishali d/o Vitthalrao Tajne,
Aged about 18 years,
Occupation : Education.

5) Yoganand s/o Vitthalrao Tajne,
Aged about 16 years,
Occupation : Education, minor through
mother guardian applicant No.1
Naganbai wd/o Vitthalrao Tajne.
All resident of Bamni,
Tahsil and District Chandrapur.

6) Satish s/o Wamanrao Dadgal, (Org. Non-Applicants)
Aged about 35 years, (On R.A.)
Occupation : Business,
R/o Hospital Ward, Chandrapur,
Tahsil and District Chandrapur.

F.A. is dismissed against R. Nos.7 & 8 as per R (J) order dtd.26.4.11.

7) Sammadbin s/o Mohammadbin Salam, **(Deleted)**

8) Vikhar Ahemad Khan s/o Bashir Ahmad Khan, Aged Major,
Occupation : Business, Resident of
Qrt.No.622, B.P.M. Colony, Ballarpur,
Tahsil and District Chandrapur.

F.A. is dismissed against R. No.9 as per R (J) order dt.6/9/11.

9) Mr. Sukhrajsingh s/o Capt. Mohindersingh,
C/o Bal Road Lines, Warora Road,
Chandrapur, Tahsil and District Chandrapur.

10) National Insurance Company Ltd.,
Through its Branch Manager,
Jatpura Gate, Chandrapur,
Tahsil and District Chandrapur. .. Respondents

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Shri B.P. Bhatt, Advocate for Appellant.

Shri Pranav Vaidya, Advocate h/f Shri S.P. Bhandarkar, Advocate for Respondent Nos.1 to 5.

Mrs. Anita Mategaonkar, Advocate for Respondent No.10.

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CORAM : PRAVIN S. PATIL, J.
DATED : 16.12.2025.

JUDGMENT

1. The present appeal is filed by the New India Assurance Company Limited alleging that the learned Tribunal has failed

to assess the evidence as well as the record made available by the parties and, thereby, wrongly held Appellant-Insurance Company responsible to pay the compensation amount to the legal heirs of the deceased. Hence, the present appeal is preferred to challenge the judgment and order dated 18.12.2007 in Motor Accident Claims Petition No.70/1997 decided by the Motor Accident Claims Tribunal, Chandrapur.

2. The facts, in brief, are as under :

In the present matter the accident took place on 7.10.1996 on Ballarpur-Allapalli road. At the time of accident, deceased was driving Luna bearing No.MAH-1189 and one Baburao Salve was the pillion rider on that Luna. It is alleged that the offending truck bearing registration no.MWY-2454 came from opposite direction in a rash and negligent manner in high speed and dashed to the Luna. Due to the impact, the deceased and pillion rider of the Luna fell down and got injured. In the said accident, the deceased died on the spot while the pillion rider Baburao Salve was taken to the General Hospital, Chandrapur, where he succumbed to the injuries on 28.10.1996.

3. In the background of above, the claimant had filed the Claim Petition before the Claim Tribunal. In their application which was filed before the Claim Tribunal, it is stated that the vehicle involved in the accident was truck bearing no.MWY-2454. The owner of the truck was stated to be Satish Wamanrao Dadgal as well as Vikhar Ahemad Khan s/o Bashir Ahmad Khan. It was stated that the truck was insured with New India Assurance Company Limited and having the valid policy from the period 2.1.1996 to 1.1.1997. As such, on the basis of this details of offending vehicle, the claim petition was filed. In claim petition, addition to the driver, owner and insurance company as stated in application, it is seen that one Sukhrajsingh s/o Capt. Mohindersingh and National Insurance Company Limited was also impleaded in the array of the respondents without disclosing any material against them in their claim petition.

4. In response to the notice issued by the Tribunal, the alleged owner of the vehicle as per claimants namely, Satish s/o Wamanrao Dadgal has filed his written statement on 24.4.2001. In his written statement particularly in paras 2 and 7 stated as

under :

2. The driving of Luna with two passengers thereon is against the rules. It is denied that truck No.MWY-2454 was involved in the accident. It is denied that the Non-applicant No.1 was the owner and insured and that this non-applicant No.3 was the insurer of the vehicle at the relevant time since the policy which was issued in favour of Mr. Sukhrajsingh s/o Capt. Mohindarsingh stood cancelled as the cheque for transfer of vehicle has returned unpaid by their bankers and that the cancellation was informed by the insurance company dated 14-2-96 vide its letter No.92170.

7. The Non-applicant No. 1 had entered into an agreement to sell the vehicle i.e. truck No.MWY-2454 to one Riyajkhan Ahemadkhan, r/o Vidya Nagar, Ward, Ballarpur, Tah. Ballarpur, Distt. Chandrapur. The agreement to that effect was accordingly entered into between Non-applicant No.1 on one hand and said Riyajkhan on the other on 7-3-95. As per said agreement, the vehicle was accordingly given in possession of said Riyajalikhan in view of receipt of part payment of Rs.1,00,000/-. The Non-applicant No.1 had received the balance payment of Rs.1,25,000/- on 30-6-95 and sale was accordingly completed on that date and said Riyajkhan became the owner of the said vehicle on and from 30-6-95. The Non-applicant No.1 is not in any way related to the accident as he was not also owner of the said vehicle. The Non-applicant No.1 had also intimated about the sale of the vehicle to the Dy. R.T.O., Chandrapur vide his letter dt. 30-6-95 and transaction of sale was complete as stated above. On and from 1-7-95, the Non-applicant has nothing to do with the said vehicle. The Non-applicant No. 1 is thus not in any way liable to pay any compensation to the applicants in respect of alleged accident dt.7-10-96. The claim petition is therefore liable to be dismissed against this Non-applicant with costs."

5. From this written statement, it is clear that he has denied the ownership of the vehicle and stated that the policy was issued in favour of one Sukhrajsingh s/o Capt. Mohindersingh and policy which was issued in his name was cancelled by the respondent no.3-insurance company vide communication dated 14.2.1996 vide letter no.92170. So also it is seen from his written statement that he has entered into an agreement to sell offending vehicle to one Riyajkhan Ahemadkhan on 7.3.1995 and possession of the vehicle was also given to the said person. He further stated that the intimation about the sale of the vehicle was given to the Deputy Regional Transport Officer, Chandrapur vide his letter dated 30.6.1995 i.e. before the date of accident. Hence, he is not responsible to pay any compensation to the claimants in the matter.

6. The present appellant-insurance company has also filed their written statement before the claim tribunal dated 2.7.1998. In their written statement, it is submitted by them that at the relevant time of accident, the policy of offending truck was issued in favour of Sukhrajsingh s/o Capt.

Mohindersingh and same was cancelled as the cheque for transfer of vehicle has been returned unpaid by their bankers and said information was given on 14.2.1996 vide his letter no.92170. In the same manner, the respondent no.10-National Insurance Company also filed their written statement before the Motor Accident Claims Tribunal and stated that the offending truck bearing no. MWY-2454 was insured with the company. However, they have stated that as the claimant himself has pleaded in the application that the said vehicle was insured with the New India Assurance Company Limited, Branch at Chandrapur and no particulars are brought on record, they have denied the responsibility of payment of compensation to the claimants in the matter.

7. In the background of above said defence of both the insurance companies, the learned Tribunal proceeded to decide the claim petition. It is pertinent to note that neither the appellant-insurance company nor respondent no.10-insurance company entered into the witness box in support of their defence and to establish the fact who is real owner of offending truck and which policy of vehicle was valid at the time of

accident. Learned Tribunal, considering the fact that the Tribunal has to only determine issue of compensation payable to the legal heirs of the deceased, did not enter into internal controversy of the matter and on the basis of evidence of claimants held that the claimants are entitled for the compensation of Rs.2,96,500/- with interest from the date of filing of petition till its realization.

8. In the present appeal, the issue of the compensation is not disputed by the appellant-insurance company. The submission of the appellant-insurance company is that at the relevant time of accident the offending truck was not insured with the appellant-company. According to them, at the relevant time, the owner of the truck was one Sukhrajsingh s/o Capt. Mohindersingh as per policy of vehicle and due to dishonour of the cheque towards the premium, he was also informed that the policy has been cancelled. It is also stated that there are no allegation against the said Sukhrajsingh in entire claim petition. The allegations are against the respondent no.6 Satish s/o Wamanrao Dadgal and Vikhar Ahemad Khan s/o Bashir Ahmad Khan, who were not the owner of the vehicle as per their

record. Hence, according to the appellant, if as per the policy which was alleged to be issued by the appellant-insurance company and there were no allegation against the owner of the vehicle, the appellant-insurance company cannot be held responsible to indemnify the claimants in the matter.

9. The respondent no.10-insurance company has come with a submission that the offending truck was insured with the company. Before the claim tribunal, the claimant has proved the registration of the offending vehicle (Exh.96) which is the registration details of the offending vehicle issued by the Deputy Regional Transport Officer, Chandrapur shows that the owner of the vehicle namely Satish s/o Wamanrao Dadgal, but the vehicle shown to be insured with National Insurance Company having the validity period 2.1.1996 to 1.1.1997. Likewise, (Exh.97) issued by the same authority i.e. Deputy Regional Transport Officer, Chandrapur shows that the offending vehicle was owned by Vikhar Ahemad Khan s/o Bashir Ahmad Khan and the vehicle was insured with New Indian Assurance Company Limited for the period 2.1.1996 to 1.1.1997. As such, it is the submission of the respondent no.10-insurance company

that considering the owner of the vehicle Shri Vikhar Ahemad Khan s/o Bashir Ahmad Khan, the respondent no.10-insurance company cannot be held responsible to indemnify the claimants in the matter as this document shows that the vehicle was insured with New India Assurance Company Limited.

10. From Exh.96 and 97 it is clear that the authority namely Deputy Regional Transport Officer has issued contradictory details of the same vehicle by different document. Therefore, the Tribunal ought to have considered this aspect and recorded the findings as to which company is responsible to pay the compensation to the claimants in the light of evidence available on record. However, learned Tribunal in the impugned judgment has held that as there is a dispute between both insurance company they can be made jointly and severally liable and interse liability in between them can be decided by them for which, Tribunal is not concerned. But in the operative part of judgment and order exonerated the present respondent no.10-National Insurance Company from the responsibility of the payment of compensation. The whole responsibility is fixed on the present appellant-insurance company to pay the entire

compensation.

11. From the above said documents and findings, it is clear that in the present appeal the dispute is between two insurance companies. The appellant-insurance company states that at the relevant time vehicle was not insured with the company and, therefore, they are not responsible to pay the compensation. The owner, who was impleaded as a respondent no.1 before the claim petition and here respondent no.6, from his written statement, it is clear that he has stated that the insurance policy was issued in the name of Sukhrajsingh s/o Capt. Mohindersingh and same was cancelled by appellant. He further states that the vehicle was sold by him to one Riyajkhan Ahemadkhan, but in the judgment, there is no reference of the name of Riyajkhan Ahemadkhan.

12. From the record it is seen that the submission of the appellant-insurance company corroborates with the submission of respondent no.6 (alleged owner) to the extent that the policy was issued in the name of Sukhrajsingh s/o Capt. Mohindersingh and same was cancelled. However, in the entire claim petition as well as in the evidence there are no allegations

against Sukhrajsingh s/o Capt. Mohindersingh in the matter. So also that person never appeared before Claim Tribunal. As such this issue remained un-answered by Claim Tribunal.

13. The respondent no.10-Insurance Company has filed the written statement and stated that at the relevant time the offending truck was insured with the respondent no.10, but no details of the said insurance company were placed on record by the claimants in the matter. But did not disclose as per their record, who has applied for insurance of vehicle and who is the owner of offending vehicle, interestingly the policy was also not placed on record by the respondent no.10-insurance company before the claim tribunal to ascertain the fact as to who is the owner of the vehicle and in whose name the insurance policy was issued by the respondent no.10-insurance company.

14. In my opinion, considering this peculiar facts of the matter, the issue as to which insurance company is responsible to pay the compensation to the claimants ought to have been determined by the claim tribunal in his peculiar facts and circumstances of the matter. However, learned Tribunal, without going into this factual aspect and contrary to its own

findings, has held only appellant-insurance company is responsible to pay the entire compensation to the claimants.

15. In the present matter though controversy is revolving around the fact as to who is responsible to indemnify the claimants, the claimants can't be put on hold from receiving the amount of compensation determined by Claim Tribunal. It is necessary to consider that the claimants, who are not responsible in any manner to the dispute between the insurance companies, should get amount of compensation as expeditiously as possible.

16. In such circumstances, the appellant-insurance company can be directed to release the compensation amount to the claimants and this matter can be sent back to the Tribunal to determine which insurance company is responsible for the payment of compensation and after granting opportunity to both the insurance company, determined the issue and fix the responsibility on the insurance company. If it is found that appellant-insurance company is not responsible then the insurance company can recover the said amount which was paid to the claimants from respondent no.10-insurance company.

Hence, in my considered opinion, the following order will subserve the justice in the matter. Hence, I proceed to pass the following order :

O R D E R

(1) The appeal is partly allowed.

(2) The judgment and order dated 18.12.2007 in MACP No.70/1997 is modified to the extent holding Appellant-insurance company is solely responsible to pay the compensation to the legal heirs of deceased, is illegal and incorrect.

(3) The proceeding of MACP No.70/1997 are remitted back to the Motor Accident Claims Tribunal, Chandrapur, to determine and fix the responsibility of amount of compensation of Rs.2,96,500/- after granting opportunity of hearing either of respondents in the matter.

(4) In the circumstances, appellant-insurance company at present is directed to disburse the compensation amount of Rs.2,96,500/- with interest as per Claim Tribunal award to the claimants.

(5) Appellant-insurance company in case exonerated from its responsibility by the Claim Tribunal after considering the merits of the matter, appellant-insurance company will be entitled to recover the amount which is disbursed in favor of claimants as the order and direction passed by Claim Tribunal in the matter.

(6) The claimants are permitted to withdraw the amount which is already deposited by the Appellant-Insurance Company to this Court, subject to satisfaction of the Registrar (Judicial).

(7) No order as to costs.

(Pravin S. Patil, J.)

Gulande