IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

7 WRIT PETITION NO. 10769 OF 2017

The New India Assurance Co Ltd Through Its Manager
VERSUS
Anushree Rajkumar Jalawad And Another
...
Advocate for the Petitioner/appellant in all first appeals : Mr. Deshpande Dhananjay P.
Advocate for Respondents in WP/FA : Mr. Kanawade Ajay T.
Advocate for Respondents in FA/CA : Mr. Shrikant S. Kulkarni
...

FIRST APPEAL NO.1139 OF 2026

FIRST APPEAL NO.1140 OF 2026

FIRST APPEAL NO.1141 OF 2026

FIRST APPEAL NO.1142 OF 2026

FIRST APPEAL NO. 1690 OF 2019

FIRST APPEAL NO.1143 OF 2026

FIRST APPEAL NO.1138 OF 2026

CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 30.03.2026

PER COURT :

1. Heard the learned counsel for the respective parties.

2. The present writ petition and all the first appeals arise out of the same accident and involve common questions of fact and law. Hence, they were clubbed together by the order of Hon’ble Administrative Judge of this Court and are being decided by this common order.

3. The petitioner–Insurance Company has assailed the judgment and award passed by the learned Ad-hoc District Judge–1 and Ex-Officio Member, Motor Accident Claims Tribunal, Bhokar, District Nanded in following matters:-

WP/FA No.	Case No.	Date of Decision	Decision
WP-10769/2017	MACP No.16/2011	09/12/2016	Partly allowed with proportionate costs.
FA-1139/2026	MACP No.20/2011	17/12/2016	Partly allowed with proportionate costs.
FA-1140/2026	MACP No.17/2011	17/12/2016	Partly allowed with proportionate costs.
FA-1141/2026	MACP No.15/2011	17/12/2016	Partly allowed with proportionate costs.
FA-1142/2026	MACP No.13/2011	17/12/2016	Partly allowed with proportionate costs.
FA-1690/2019	MACP No.12/2011	07/12/2016	Allowed with costs.
FA-1143/2026	MACP No.22/2012	17/12/2016	Partly allowed with proportionate costs.
FA-1138/2026	MACP No.18/2011	17/12/2016	Partly allowed with proportionate costs.

4. Learned counsel for the petitioner/appellant submits that the claimants themselves have admitted that the vehicle was engaged on hire basis at the rate of Rs.6 per kilometer and that the passengers were fare-paying passengers. It is submitted that the charge-sheet and police papers clearly establish that the vehicle was used for commercial purposes. Despite this, the Tribunal erroneously held that the vehicle was not used commercially.

5. It is further submitted that there was a fundamental breach of

policy conditions, as the seating capacity of the vehicle was 8+1, whereas about 15 passengers were traveling at the relevant time but the policy covers only 9 passengers including driver. According to the learned counsel, carrying excess passengers beyond the permitted capacity amounts to a breach of policy conditions, and therefore, the Insurance Company is entitled to avoid liability under Section 149 of the Motor Vehicles Act, 1988.

6. It is also contended that the evidence of the owner was collusive and intended to support the claimants. Further, the salary certificate of the deceased in Claim Petition No.12 of 2011 was not duly proved, and the Tribunal erred in relying upon the same. It is also urged that appropriate deduction towards personal expenses of the deceased was not made. The learned Tribunal ought to have deducted 1/3rd amount towards personal expenses.

7. Per contra, Mr. Kanawade and Mr. Kulkarni, the learned counsel for the respective respondents support the impugned awards and submit that the Tribunal has rightly appreciated the evidence on record.

8. I have gone through the entire record, including the oral and documentary evidence. The evidence of PW-1 Gita Dasarwad, wife of the deceased in First Appeal No.1690/2019, indicates that she, along with her husband and others, had travelled in the vehicle due to personal acquaintance and not on payment of fare. Nothing has been elicited in her cross-examination to establish that the vehicle was hired. The owner

of the vehicle has also deposed that the passengers were known to him and had accompanied him for a visit to Shirdi. There is no cogent evidence on record to establish that the vehicle was hired or that fare was paid by the passengers.

9. As per the law laid down the Hon'ble Apex Court in the case of ***United India Insurance Company Ltd. v. K. M. Poonam and Ors.*** *(2011 AIR SCW 2802),* the burden to prove breach of policy conditions lies upon the Insurance Company. In the present case, the Insurance Company has failed to establish that the vehicle was being used for hire or reward. The Tribunal has rightly relied upon the settled legal position that mere pleading is not sufficient, and the Insurance Company must prove breach of policy conditions by leading cogent evidence. Upon appreciation of the entire evidence, I find that the Tribunal has not committed any error while deciding the claim petitions. No case is made out to interfere with the impugned judgment and award. Hence, I proceed to pass following order:-

ORDER

i) The Writ Petition and connected First Appeals stand dismissed.

ii) No order as to costs.

iii) Pending Civil Applications, if any, stand disposed of.

[SIDDHESHWAR S. THOMBRE]
JUDGE