



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

FIRST APPEAL NO. 3053 OF 2013

The Oriental Insurance Co. Ltd.,  
Through its Br. Manager,  
Daulat Building, Shivaji Chowk,  
Parbhani, Through its authorized  
signatory, Sr.Div. Manager, D.O.I.,  
Oriental Insurance Co. Ltd., Aurangabad. ....Appellant

**Versus**

1. Ramrao Annasaheb Borgad  
Age: 45 yrs., Occu.: Agri.,  
R/o. Nahad, Tq.Basmath, Dist.Hingoli.
2. Sagarbai Ramrao Borgad  
Age: 41 yrs., Occu.: Household,  
R/o. As above.
3. Sundarrao Munjaji Kurhe  
Age: 63 yrs., Occu.: Agri. / Business,  
R/o. Shirla, Tq.Aundha, Dist.Hingoli.
4. Ganesh Nagorao Kadam, since  
Decased, through his L.Rs.
- 4A. Kondabai Ganesh Kadam  
Age: 51 yrs., Occu.: Agri./Business,  
R/o. Nahad, Tq.Basmath, Dist.Hingoli.
- 4B. Sambhaji Ganesh Kadam  
Age: 30 yrs., Occu.: Business/Driver,  
R/o. As above.
- 4C. Nagorao @ Pintu s/o. Ganesh Kadam  
Age: 28 yrs., Occu.: Agri.,  
R/o. As above. ....Respondents

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Advocate for Appellant : Mr. Dhananjay P. Deshpande (through VC)

Advocate for Respondent no.1 : Mr. Mahesh P Kale

Advocate for Respondent no.3 : Ms.Ranjita Mahajan h/f.

Mr. Sudhir Chavan

Respondent nos. 2, 4A to 4C served.

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**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 17-03-2026

Pronounced on : 24-03-2026

**JUDGMENT :**

1. This is appeal by Insurance Company whereby it is aggrieved by the judgment and order dated 01-01-2013 passed by learned Member, Motor Accident Claims Tribunal (MACT), Basmat, directing Insurance Company to first pay and then recover from original respondent nos.3/1 to 3/3 i.e. compensation awarded on account of death of deceased Vaibhav son of original petitioners/claimants in a road traffic accident.

2. Facts giving arise to claim petition by invoking Section 166 of Motor Vehicles Act, are that, on 23-04-2006, Vaibhav had been to Aundha [Nagnath] alongwith his uncle and aunt in Jeep bearing No.MH-22 B-8165. While returning back to the village, the Jeep suffered accident and it turned turtle causing fatal injuries to Vaibhav, who while undergoing treatment, breath his last on 24-04-2006.

Resultantly, his parents/original claimants filed above claim petition bearing no.32 of 2006 and sought compensation from driver, insurance company as well as owner of the vehicle and the same was decided by learned Tribunal by Judgment and order dated

01-01-2013 wherein following order has been passed :

- “1. The petition is partly allowed with proportionate costs.
2. Respondent nos.3/1 to 3/3 shall pay jointly and severally an amount of Rs.1,63,000/- (Rs.One lakh and sixty three thousand) to the petitioners along with interest at the rate of 7% per annum from the date of petition till the realization of entire amount.
3. This amount of Rs.1,63,000/0 is inclusive of the amount of Rs.50,000/- (Rs.Fifty thousand) under Section 140 of M.V.Act on the basis of no fault liability.
4. Respondent no.1 and 2 are exonerated from the liability to pay the compensation to the petitioners. However, respondent no.2 is directed to pay the amount of compensation firstly to the petitioners and recover that amount of compensation from respondent nos.3/1 to 3/3 jointly and severally.
5. For that purpose it will not be necessary for respondent no.2 to file any suit, Respondent no.2 will be entitled to recover that amount of compensation paid to the petitioners on the basis of this award by filing execution proceeding.
6. Respondent nos.3/1 to 3/3 are hereby restrained from the sale of offending vehicle in any manner to anybody. Offending vehicle i.e. MH-22/B-8165 is hereby attached till the recovery of amount from respondent no.3/1 to 3/3.
7. Respondent no.2 shall submit copy of this order to concerned RTO for taking the necessary entry in the relevant record of offending vehicle.
8. Award be drawn accordingly.”

3. Aggrieved by the above directions, more particularly, to first pay and then recover, Insurance Company/original respondent no.2 has come up in appeal.

4. Learned counsel for appellant Insurance Company would point out that, learned Tribunal had rightly exonerated Insurance Company on the ground of driver of the offending vehicle not holding valid and effective driving licence on the date of accident and also taking into account the fact that FIR was registered against the driver of the Jeep, which was apparently a private vehicle. That, there was specific finding by learned Tribunal that on account of breach of terms and conditions of policy, Insurance Company is not liable to pay compensation.

5. However, he further submitted that, in spite of above findings, learned Tribunal has erred in directing Insurance Company to first pay the compensation and then recover. It is his specific contention that such directions cannot be issued when there is fundamental breach of policy itself. That, offending vehicle was privately owned vehicle. That, incumbents of the vehicle were fare paying passengers. That, this was not permissible nor there was any extra premium paid for carrying such passengers. Thus, there was breach of policy which was act policy. That, there was no contract between Insurance Company and owner of the offending vehicle. Therefore, even Tribunal has rightly exonerated Insurance Company and as such there was no need to direct Insurance Company to first pay compensation

and then recover. In support of above contention, learned counsel Mr.Deshpande seeks reliance on judgment of this Court in First Appeal Nos.513 of 2004 with 377 of 2004 decided on 27-03-2023 as well as in First Appeal No.1638 of 2013, (2015) 1 Mah.LJ. 827.

6. In answer to above, learned counsel for claimants would justify the judgment and order and directions and according to him, there are numerous judgments of this court as well as Hon'ble Apex Court directing Insurance Company to first pay and then recover.

7. After considering above submissions, the short issue, which this Court is called upon to address in this appeal is whether once when Insurance Company is exonerated from liability to pay compensation, a Motor Accident Claims Tribunal can at all direct Insurance Company to first pay compensation and then recover.

8. Learned counsel for appellant has placed reliance on above rulings and there is no dispute to that extent. However, both the judgments are of this Court.

9. The Hon'ble Apex Court in the recent Judgment dated 24-09-2025, passed in the case of *Rama Bai v. M/s.Amit Minerals*,

*through Incharge Officer, Competent Officer and Another*, in Civil Appeal 9669 of 2024, by dealing with its earlier judgments in the case of *Shamanna and Another v. Divisional Manager, Oriental Insurance Company Limited and others*, (2018) 9 SCC 650 and *Parminder Singh v. New India Assurance Company Ltd., and Others*, (1019) 7 SCC 217, wherein law on principle of pay and recover has been summarized by taking into account earlier judgment in the case of *National Insurance Co. Ltd., v. Swaran Singh*, (2004) 3 SCC 297, held that, “Tribunal can direct to first pay and then recover in spite of breach of policy”.

Taking into account above settled legal proposition laid down by the Hon’ble Apex Court, this court does not find it a case to overturn the directions of the Tribunal in this case to the insurer to first pay and then recover. Accordingly following order is passed :

**ORDER**

First Appeal stands dismissed.

**[ABHAY S. WAGHWASE, J.]**