IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1250 OF 2014
WITH CIVIL APPLICATION NO. 7233 OF 2010
IN FIRST APPEAL NO. 1250 OF 2014

New India Assurance Company Ltd., Aurangabad
Through its Divisional Manager,
Adalat Road, Aurangabad. … Appellant
(Original Respondent No.3)

Versus

1. Tulsabai w/o Chotelal Adwasi
Age 38 Years, Occu : Household,
R/o Basta, Post Paghria,
Taluka and District Chattarpur,
At present More Project, Hingone,
Taluka Yawal, District Jalgaon.

2. Bhura s/o Chotelal Adwasi,
Age 17 Years, Occu : Education,

3. Laxmi d/o Chotelal Adwasi,
Age : 14 years, Occu : Education.

4. Vinod Chotelal Adwasi,
Age : 13 Years, Occu : Education.

(Respondent Nos. 2 to 4 are minors,
u/g of Respondent no. 1 real mother)

5. Jagannath s/o Kashiram Choudhari,
Age : 49 years, Occu : Truck Driver,
R/o Kurha (Panache), Taluka Bhusawal,
District Jalgaon.

6. M/s Golani Brothers,
Plot No. 136, Near Sakri Phata,
Deepnagar, Bhusawal,
Taluka Bhusawal, District Jalgaon. … Respondents
(R 2 to 4 ori. Claimants,
R 5 & 6 ori. R Nos. 1 & 2)

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Mr. M. M. Ambhore, Advocate for the Appellant.
Mr. Datta A. Madake, Advocate h/f Mr. Girish Nagori, Advocate for Respondent Nos. 1 to 4.

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CORAM : ABHAY S. WAGHWASE, J.
Reserved on : 15.04.2026
Pronounced on : 17.04.2026

ORDER :

1. In this appeal by insurance company/original defendant no.3, there is challenge to the judgment and award passed by learned Member, M.A.C.T., Jalgaon, dated 18.11.2009 awarding compensation as sought by present respondent nos. 1 to 4 by invoking Section 166 of the Motor Vehicles Act, 1988.

2. Brief background of the appeal is that, heirs of one Chotelal, who suffered death on being run over by a dumper bearing no. MWP 1399, set up accident claim petition attributing negligence to the drive defendant no.1 of the vehicle owned by defendant no.2 and insured by defendant no.3 (present appellant). Specific case set up was that, deceased was in employment of defendant no.2. On 12.04.2000, driver of the dumper-defendant no.1 was rash and negligent while parking the vehicle and he ran the vehicle over Chotelal who was a labour working over the said dumper.

3. The above claim was resisted by all defendants including present appellant. Appellant insurance company took a specific plea that deceased was travelling as a passenger in the goods vehicle in the capacity of gratuitous passenger for which no premium was paid and therefore, there was no coverage of risk of deceased and so, insurance company was not liable.

4. After appreciating the pleadings raised by the parties, learned tribunal was pleased to allow the claim petition directing defendant nos. 2 and 3, i.e. owner and insurer, to pay compensation to the claimants to the tune of Rs.2,30,000/- with interest @ 7.5%.

Feeling aggrieved by the above award, insurance company has come up by way of instant appeal.

5. Learned counsel for the appellant would point out that, firstly, claimants failed to prove that there was rash and negligent driving on the part of defendant no.1 driver of the dumper, and more particularly there was no coverage of deceased who was travelling as a passenger and he had come under the wheel while alighting from the vehicle. Therefore, risk of such person was not covered and therefore insurance company is not liable.

6. Learned counsel further pointed out that, there was no evidence before the tribunal to show that deceased was in employment of defendant no.2, but still learned tribunal has considered the employment of deceased and has grated compensation which, according to him, is the erroneous and perverse finding.

In support of above contentions, he seeks reliance on the judgment of the Hon'ble Apex Court in the case of ***New India Assurance Company Ltd. v. Asha Rani and others*** AIR 2003 SC 607 i.e. on the point of liability of insurer to compensate gratuitous passenger travelling in a goods vehicle and on the point of proof of rashness and negligence on the part of driver of vehicle to be *sine qua non* for maintaining claim.

7. Per contra, learned counsel for respondents-original claimants would justify the award by submitting that, there was specific pleading that deceased was in the employment of defendant no.2. Said defendant had also admitted such employment of deceased and therefore, vehicle being insured with defendant no.3, learned tribunal has rightly directed both defendants, i.e. defendant nos. 2 and 3, to jointly and severely pay the compensation. It is pointed out that, appellant insurance company having taken a specific plea, was

expected to prove that deceased was traveling as a passenger and not as an employee, but insurance company having failed, compensation has been rightly granted.

8. Learned counsel further pointed out that, there is no just compensation as there is non-consideration of amounts under conventional heads, namely, loss of estate, funeral expenses and loss of filial consortium.

9. The only issue in the case is, whether tribunal was justified in allowing compensation on account of death of husband of claimant no.1 who admittedly was run over by the vehicle driven by defendant no.1 and owned by defendant no.2. There is no dispute that vehicle in question was insured with defendant no.3 appellant.

10. The specific ground in present appeal put forth by the insurance company is that, deceased was travelling as a gratuitous passenger in a vehicle meant for goods and there being no coverage, insurance company is not liable.

11. In the light of above objection, record is put to scrutiny, whereupon it is noticed that, claimants have specifically averred in

the plaint that deceased Chotelal was in service of defendant no.2 as a labour over dumper no. 1399. In her evidence, claimant no.1 Tulsabai has also deposed to that extent. Moreover, very owner-alleged employer of deceased in his written statement at Exh. 21 has admitted employment of deceased with it. Therefore, there is support to the pleading and contention of claimants that deceased was in employment of defendant no.2. consequently submissions made by learned counsel for the appellant-insurance company that, there was no distinct evidence or proof of employee, has no force or substance.

12. Once claimants have demonstrated that deceased was in employment of defendant no.2 as a labour, and he having died during the course of employment, both, defendant no.2 owner as well as his insurer defendant no.3 (present appellant) are liable to pay compensation. In the judgment and award, there is discussion on this point, more particularly in para 10. Accident seems to have taken place while offending truck was being parked and when deceased was shown to be alighting. At that time, proper care was expected from the driver of the offending vehicle. FIR is also registered against driver of the offending vehicle i.e. defendant no.1. Except raising plea that negligence of dumper driver is not proved, there is no distinct evidence on behalf of the insurance company.

13. To sum up, when there is material to show that deceased was in the employment of defendant no.2, who is also the owner of offending dumper, and accident having taken place during the course of employment, learned trial court committed no error in directing compensation to be paid jointly and severally by defendant no. 2-owner and defendant no.3-present appellant.

14. Learned counsel has placed reliance on above referred judgment, but there is no dispute about the legal position. Here, claimants have demonstrated that deceased was in employment of defendant no.2 as a labour and therefore, though it was a goods vehicle, insurance company is liable. Though it is submitted before this Court that there is no grant of just compensation, in the light of pleadings and quality of evidence on record, the tribunal seems to have granted adequate compensation. There being no merits in the appeal, following order is passed :

ORDER

I. The First Appeal is dismissed.
II. Pending civil application stands disposed off.
III. Interim stay/relief, if any, stands vacated.

[ABHAY S. WAGHWASE, J.]

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