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

FIRST APPEAL NO. 129 OF 2026

HDFC ERGO General Insurance Co. Ltd. IRDIA Reg. No.146 Registered Corporate Office, 1st Floor HDFC House, Eastern Business, District [Magnet Man], L. B. S. Marg, Bhandup (West), Mumbai – 400078, Through its duly constituted Attorney/Branch Manager, Mumbai – 400078 (Maharashtra) ... **APPELLANT**

VERSUS

1. Dipali wd/o Kishor Shende
Age : 39 Years, Occu : Household;

2. Mast. Mohit s/o Kishor Shende
Aged : 13 Years, Occu : Education;

3. Ku. Rudrani d/o Kishor Shende
Aged : 9 Years, Occu : Education;

4. Sau. Usha Madhukarrao Shende
Aged : 62 Years, Occu : Education;

All R/o Pimpalgaon Road, Butle Lay Out, Yavatmal, Tahsil and District Yavatmal.

5. Zulesh s/o Kashinath Meshram
Aged : 39 Years, Occu : Vehicle Owner/Employer; R/o Near Rajaram Nagar, At Kapilwastu Nagar, Yavatmal, Tahsil and District Yavatmal. ... **RESPONDENTS**

Mr. H. N. Verma, Advocate for Appellant/Insurance Company.
Mr. Samir S. Das, Advocate for Respondent Nos.1 to 4.
Mr. J. S. Wankhede, Advocate for Respondent No.5.

<u>CORAM</u>	**: PRAVIN S. PATIL, J.**
<u>ARGUMENTS HEARD ON</u>	**: JUNE 30, 2026.**
<u>PRONOUNCED ON</u>	**: JULY 20, 2026.**

<u>JUDGMENT</u>

. Heard Mr. H. N. Verma, learned Counsel for the Appellant/Insurance Company, Mr. Samir S. Das, learned Counsel for the Respondent Nos.1 to 4 and Mr. J. S. Wankhede, learned Counsel for the Respondent No.5.

2. By the present Appeal, the Appellant/Insurance Company has challenged the Judgment and Award dated 3/5/2025 passed by the Commissioner, under Employee's Compensation Act, 1923 in E.C.A. Case No. 20/2021, thereby awarding compensation of Rs. 13,60,275/- along with interest at the rate of 12% per annum from the date of the Petition till actual realization.

3. In the present Appeal, this Court has framed the issue, *"As to whether on the date of the accident the vehicle involved in the accident was insured with the Appellant/Insurance Company or not?*" In the present matter after hearing the parties, in my opinion, the question of law needs to be modified. Accordingly, same is modified as, "Whether the Insurance Company

is responsible to pay compensation to the third party, particularly, when the cheque issued towards premium of policy is dishonoured and same was duly communicated to the owner of the vehicle before occurrence of accident of vehicle?”

4. In the light of question of law framed by this Court, it would be relevant to record certain facts of the matter, which are summarized as under :

5. The Respondent Nos.1 to 4 are original Applicants, who filed the Application under Section 22 of the Employee’s Compensation Act, 1923 for grant of compensation towards the death of deceased Kishor Shende, who according to the Respondents/Claimants died in an accident during the course of employment with the Respondent No.5. The case of the Respondents/Claimants before the learned Commissioner was that the deceased Kishor Shende was working as a driver on Goods Carrier Mini Truck bearing registration No. MH-29-AM-3330, which is belonging to the Respondent No.5, who was carrying the business of transportation of goods. On 27/7/2021 the deceased Kishor, while on duty was plying the vehicle towards Nagpur, near village Bhidi, district Wardha, he met with an accident and suffered fatal injuries. He was taken to AVBR Hospital, Sawangi Meghe, where he succumbed to his injuries on 1/8/2021. It is the submission of the

Respondents/Claimants that the deceased Kishor was earning Rs.17,000/- per month from Respondent No.5 and at the time of accident the deceased was aged about 41 years. Hence, they claimed compensation of Rs.13,60,275/- from the Respondent No.5 and the Appellant/Insurance Company.

6. The Appellant herein, in response to the notice issued by the learned Commissioner under Employee's Compensation Act, appeared in the matter and contested the application by filing the written statement. It was specifically contended by the Insurance Company that they are not liable to pay any amount towards compensation, as the premium which was paid by the Respondent No.5 i.e. owner through cheque was dishonoured and the same was duly communicated to the Respondent No.5/Owner before the date of the accident. Hence, according to the Appellant, the date on which communication was received by the Respondent No.5, policy became void from it's inception. Hence, they are not entitled for payment of any compensation.

7. The learned Commissioner, by the impugned Judgment, has held that though the Appellant/Insurance Company has intimated to the Respondent No.5/Owner about dishonouring of the cheque, which was tendered by him towards the premium, no endorsement of "cancellation" is recorded over the policy. This fact is also admitted by the Appellant during the

cross-examination of their witness. It is further held by the learned Commissioner that there is no clear proof regarding non-payment of premium. It is also held that in absence of such endorsement of cancellation indicated over the policy, the Appellant/Insurance Company cannot be exonerated to indemnify the Claimants in the matter, and accordingly, passed the impugned order to pay compensation jointly and severally to the Respondents/Claimants.

8. The Appellant/Insurance Company who approached before this Court has specifically pointed out from the documents, which are placed on record that admittedly the accident was occurred on 27/7/2021. Insurance policy of the vehicle was issued by the Appellant on 5/6/2021 prescribing the period of insurance from 5/6/2021 to 4/6/2022. The premium of policy was paid by the Respondent No.5 through cheque. The said cheque was dishonoured on 8/6/2021. The intimation regarding dishonour of cheque was duly served by the registered post to the Respondent No.5/Owner by communication dated 12/6/2021 and the same was duly acknowledged by the Respondent No.5 on 19/6/2021. Accordingly, it is the prime submission of the Appellant/Insurance Company that from all these dates it is clear that the accident occurred after due communication, which was duly received by the Respondent No.5/Owner, and therefore, the Appellant/Insurance Company is

not responsible to pay the compensation in the matter.

9. In response to the notices issued by this Court to the Respondents/Claimants, they appeared in the matter and pointed out that they were claiming under the insurance as a third party. The policy which relied upon by the Insurance Company was not cancelled at the office of Regional Transport Officer. According to the India Motor Tariff Advisory Committee (TAC) which is the Authority created under the provisions of Insurance Act, 1938, has laid down the Rules, Regulations, Terms and Conditions for transaction of motor insurance in India. As per GR.24 of the said Tariff Rules, it is necessary that Insurer should inform the Regional Transport Authority (RTA) concerned about the cancellation of insurance, but in the present case, same was not informed to the Regional Transport Authority. Hence, there is non-compliance of the Tariff Rules at the instance of Appellant.

10. So also the Respondents/Claimants have relied upon the provisions of Motor Vehicles Act to state that once an authorized Insurer issues the insurance policy under the Motor Vehicles Act, it incurs a statutory obligations towards the third party. This obligation is independent of any contractual dispute between the Insurer and Insured regarding the payment of premium. According to the Respondents, if the Insurer issued the policy

despite not receiving the premium, then the Insurer, in such cases, is to be held statutory responsible to pay the compensation. According to the Appellant, the statutory liability overrides the contractual liability, and therefore, once the policy is issued, the Respondents/Claimants are entitled for compensation.

11. In the present case, the Appellant has relied upon the following Judgments of the Hon'ble Supreme Court of India in the cases of -

(i) ***United India Insurance Co. Ltd. V/s Laxmamma and Ors. AIR 2012 Supreme Court 2817; and***

(ii) ***Deddappa and Others V/s Branch Manager, National Insurance Co. Ltd. (2008) 2 Supreme Court Cases 595***.

The Respondents/Claimants have relied upon the following Judgments in the cases of -

(i) ***Oriental Insurance Co. Ltd. V/s Inderjit Kaur and Others (1998) 1 Supreme Court Cases 371;***

(ii) ***New India Assurance Company Limited V/s V. Bommi & 4 Others, 2009 SCC OnLine Mad. 930;*** and

(iii) ***New India Assurance Co. Ltd. V/s Rula and Ors. (2000) 3 SCC 195.***

12. In the present matter, it is seen that in the case of ***Inderjit Kaur*** *(supra)*, the Hon'ble Supreme Court has taken a view that issue regarding

issuance of a policy by the Insurance Company creates statutory liability towards third party, therefore, in view of the provisions of the then Sections 147(5) and 149(1) of the Motor Vehicles Act, the Insurance Company became liable to indemnify the third parties in respect of the liability which that policy covered and to satisfy the awards of compensation in respect thereof notwithstanding its entitlement to avoid or cancel the policy for the reason that cheque issued in payment of the premium thereon had not been honoured.

13. In the same Judgment, the Hon'ble Supreme Court has considered Section 64-VB of the Insurance Act, 1938 by observing that once the Insurer had issued the policy of insurance without receipt of the premium amount, which is mandate under Section 64-VB, the Insurer cannot take advantage of its own wrong, particularly, when the road users are entitled to assume that they were covered by the Insurance Certificate is duly insured. Hence, the Insurance Company, which once issued the policy cannot later avoid law towards third parties merely because the cheque of premium was dishonoured, cannot be accepted.

14. The Respondents/Claimants then pointed out from the Judgment of ***V. Bommi & 4 Others*** *(supra)*, wherein the Madras Court has considered

Section 146 of the Motor Vehicles Act by observing that it deals with the necessity for insurance against the third party risk. According to the said provision no person can use a motor vehicle in a public place unless there is an insurance policy. According to the said Judgment protection for the third party is provided who met with an accident owing to the use of insured vehicle. Then the Court has relied upon the Motor Tariff Regulations, more particularly, GR.24 which deals with cancellation of Insurance and Double Insurance. According to the Madras High Court, the duty is cast upon the Insurance Company to inform the Regional Transport Authority about cancellation of the insurance policy. If such intimation is not there, the third party can claim the compensation from the Insurance Company. It would be relevant to refer paragraph Nos.24 and 25 of the Judgment of Madras High Court, where GR. 24 of the Tariff Rules was considered in that matter, which read thus :

> *"**24.** Section 146 of the Act deals with the necessity for insurance against the third party risk. Therefore, no person can use a motor vehicle in a public place unless there is an Insurance Policy. This is the protection for the third party who may meet with an accident owing to the use of the Insurance vehicle. The Motor Tariff Regulations-II of IV General Regulations GR. 24 deals with Cancellation of Insurance and Double Insurance and it reads as follows :*
>
> *"GR. 24. CANCELLATION OF INSURANCE AND DOUBLE INSURANCE*
>
> *a. Cancellation of Insurance*

i. A Policy may be cancelled by the Insurer by sending to the insured seven days notice of cancellation by recorded delivery to the insured's last know address and the Insurer will refund to the insured the pro-rata premium for the balance period of the Policy.

ii. A Policy may be cancelled at the option of the insured with seven days notice of cancellation and the Insurer will be entitled to retain premium 0n short period scale of rates for the period for which the cover has been in existence prior to the cancellation of the Policy. The balance premium, if any, will be refundable to the insured. Refund of premium will be subject to :

There being no claim under the Policy, and

The retention of minimum premium as specified in the Tariff.
A Policy can be cancelled only after ensuring that the vehicle is insured elsewhere, at least for Liability Only cover and after surrender of the original certificate of Insurance for cancellation.

Insurer should inform the Regional Transport Authority (RTA) concerned by recorded delivery about such cancellation of Insurance."

Therefore, even though the Section relating to the duty to inform the Regional Transport Authority is not found in the present case, the regulations should have the third party risk by insisting that the Policy can be cancelled in the manner mentioned above. Therefore, we are satisfied that in this case, there is a proof that he has intimated the facts of cancellation to the insured. But it has not been complied with in full with its duty as laid down in General Regulations mentioned above. Therefore, even though the Insurance Company may contend that it owes no duty to the insured to indemnify the claim for compensation as far as the third party is concerned, he is bound to receive the just and reasonable compensation.

25. *We have already referred to Swaran Singh's case where the Supreme Court has clearly stated in paragraph 48 that a Judgment*

> *must be satisfied by the Insurer, though the Insurer may be entitled to avoid or to cancel the Policy or may in fact have done so. Therefore, though we can accept that the Policy has in fact been cancelled, the judgment will have to be satisfied by the Insurer and the Insurer may recover it from the Policy holder. It is to this extent only that we can say that the Insurer has no liability to indemnify the insured. But the third party's claim stands unaffected as we understand from Swaran Singh's case. Therefore, we feel that the only course open to us would be to direct the Insurance Company to pay the claimants and thereafter, recover the same from the insured."*

15. It is also pertinent to note that the said Judgment of Madras High Court was challenged before the Hon'ble Supreme Court of India in ***Civil Appeal No. 1177 of 2015 (V. Bommi and Others V/s New India Assurance Company Limited & Anr.)***. The Hon'ble Supreme Court of India has confirmed this finding and only the part of compensation, which was reduced, was modified by its Judgment dated 20/1/2015. As such, the observation regarding the Tarrif Rules are upheld by the Hon'ble Supreme Court.

16. The Appellant has vehemently argued this matter and pointed out that the Judgment which is relied upon by the Appellant, particularly in the case of ***Inderjit Kaur*** *(supra)* was considered by the two Judgments of the Hon'ble Supreme Court of India i.e. in the case of ***Laxmamma and Ors.*** *(supra)* and ***Deddappa and Others*** *(supra)*. According to the Appellant, the law laid down in the subsequent Judgment is that where the policy of insurance issued

by an authorized insurer to cover the vehicle on receipt of cheque paid towards premium and the cheque if gets dishonoured and before that accident of the vehicle occurs, such Insurance Company cancels the policy of vehicle and send intimation thereof to the owner. The insurance liability indemnify the third party which that policy covered ceases and Insurance Company is not liable to satisfy the award of compensation in respect thereof.

17. In view of the submission of the learned Counsel for Appellant, firstly I have perused the Judgment of the Hon'ble Supreme Court of India in the case of ***Deddappa and Others*** *(supra)*, which was delivered by the Division Bench of the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court though referred Sections 147 and 149 of the Motor Vehicles Act, which was discussed in the case of ***Inderjit Kaur*** *(supra)*, has only observed in paragraph No. 24 of the Judgment as under :

> *"24. We are not oblivious of the distinction between the statutory liability of the insurance company vis-a-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and <u>all concerned have been intimated thereabout</u>, we are of the opinion, the insurance company would not be liable to satisfy the claim."*

18. According to the Hon'ble Supreme Court of India in the case of

***Deddappa** (supra),* the view expressed by the Hon'ble Supreme Court in the case of ***Inderjit Kaur** (supra),* as referred above, was not held to be incorrect nor the same was distinguished to reach to the conclusion. On the contrary, the Hon'ble Supreme Court held that there is a distinction between the statutory liability of the Insurance Company vis-a-vis a third party in the context of Sections 147 and 149 of the Act.

19. In the case of ***Laxmamma** (supra)*, on minute perusal of the Judgment it is seen that in paragraph No.18 of the Judgment it was specifically observed by the Division Bench of the Hon'ble Supreme Court that the view taken in the case of ***Inderjit Kaur** (supra)* has been diluted by the subsequent decisions is not acceptable to the Court. It would be relevant to refer paragraph No.18 of the Judgment which reads as under :

> *"18. <u>We find it hard to accept the submission of the learned counsel for the insurer that the three-Judge Bench decision in Inderjit Kaur (AIR 1998 SC 588 : 1998 AIR SCW 183) has been diluted by the subsequent decisions in Seema Malhotra (AIR 2001 SC 1197 : 2001 AIR SCW 902) and Deddappa (AIR 2008 SC 767 : 2007 AIR SCW 7948). Seema Malhotra and Deddappa turned on the facts obtaining therein</u>. In the case of Seema Malhotra, the claim was by the legal heirs of the insured for the damage to the insured vehicle. In this peculiar fact situation, the Court held that when the cheque for premium returned dishonoured, the insurer was not obligated to perform its part of the promise. Insofar as Deddappa is concerned, that was a case*

> *where the accident of the vehicle occurred after the insurance policy had already been cancelled by the insurance company."*

20. From the abovesaid legal position, it is clear that the Judgment delivered by the Bench of three Judges in the case of ***Inderjit Kaur*** *(supra)*, is till date holding the field and dealt with the issue of contractual responsibility and the statutory liability of the Insurance Company. In the said case, the Hon'ble Supreme Court, as stated above, has specifically held that despite the bar created by Section 64-VB of the Insurance Act, once the Insurance Company issued a policy without receiving the premium, in view of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, the Insurance Company became liable to indemnify third parties in respect of the liability which that policy covered.

21. In the light of above discussion, it would be more profitable to refer the Judgment of the Hon'ble Supreme Court of India in the case of ***Rula and Ors.*** *(supra)*, wherein it is held that the contract of insurance in respect of motor vehicles requires to be construed in the light of Sections 146 and 149 of the Motor Vehicles Act. Relevant observation of the Hon'ble Supreme Court is in paragraph Nos.10 and 11, which read thus :

> *"**10.** The contract of insurance in respect of motor vehicles has, therefore, to be construed in the light of the above provisions. Section 146(1) contains a prohibition on the use of the motor vehicles without an insurance policy having been taken in accordance with Chapter XI of the Motor Vehicles Act. The manifest object of this provision is to ensure that the third party, who suffers injuries due to the use of the motor vehicle, may be able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the injuries.*
>
> ***11.** Thus, any contract of insurance under Chapter XI of the Motor Vehicles Act, 1988 contemplates a third party who is not a signatory or a party to the contract of insurance but is, nevertheless, protected by such contract. As pointed out by this Court in New Asiatic Insurance Co. Ltd. v. Pessumal Dhanama Aswani, the rights of the third party to get indemnified can be exercised only against the insurer of the vehicle. It is thus clear that the third party is not concerned and does not come into the picture at all in the matter of payment of premium. Whether the premium has been paid or not is not the concern of the third party who is concerned with the fact that there was policy issued in respect of the vehicle involved in the accident and it is on the basis of this policy that the claim can be maintained by the third party against the insurer."*

Accordingly, the Judgment delivered by Three Judges Bench in the case of ***Inderjit Kaur*** *(supra)* was upheld.

22. In the light of above legal position, in the present case, though it is admitted fact that before the date of accident the Insurance Company has duly informed the Respondent No.5/owner about the policy stating that same

stands *void ab initio* from inception, it is clear that same was not informed to the Regional Transport Authority. In my opinion, once the policy of insurance was issued upon which Authorities and third parties are held entitled to act, the Insurance Company is duty-bound to inform its cancellation to the Authority, particularly, the Road Transport Authority of the region where the vehicle is registered. But, in the present case, admittedly said information of cancellation was not given to the Road Transport Authority. This view is also supported by the Rules framed by the Tariff Advisory Committee Rules GR. 24 which states that in case of cancellation of insurance policy, the Insurer should inform the Regional Transport Authority (RTA), therefore, non-information to cancellation of policy to the Authority, would entitled the third parties to take the statutory benefits as held in the case of ***Inderjit Kaur*** *(supra)*.

23. It is further pertinent to note that in the present matter, the owner of the vehicle is equally responsible for payment of the compensation. He was duty-bound to take immediate action when he received the communication from the Insurance Company, but in the present case, the perusal of the record shows that Respondent No.5/Owner is negligent and not even attended the proceeding in the present Appeal. Therefore, in the present case, while holding responsible to the Appellant/Insurance Company to pay the compensation, it

would be necessary to apply the principle of pay and recover in the matter. In that regard, the procedure, which is laid down in the case of ***National Insurance Co. Ltd. V/s Challa Upendra Rao and others, AIR 2004 Supreme Court 4882*** would be the proper procedure required to be followed in the present matter. In the said Judgment the Hon'ble Supreme Court of India has laid down the procedure in paragraph No.13 which reads as under :

> *"13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with the law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave*

it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

24. In the background of aforesaid factual and legal position, in my opinion, the following order will subserve the ends of justice in the matter.

ORDER

1. The First Appeal is dismissed.
2. The judgment and order passed by the Commissioner under the Employee's Compensation Act, 1923 dated 3/5/2025 passed in ECA Case No. 20/2021 is modified to the extend that the Appellant/Insurance Company shall pay the compensation amount to the respondents/claimants as per the judgment and order of the Commissioner under the Employee's Compensation Act, 1923 and would be entitled to recover in light of the guidelines laid down by the Hon'ble Supreme Court of India in the case of ***Challa Upendra Rao and Others*** *(supra)*.
3. Rest of judgment and order of the Commissioner under the Employee's Compensation Act, 1923 is confirmed.
4. No order as to costs.

25. Since First Appeal is disposed of, pending Civil Application Nos.

4106/2025 and 1289/2026 do not survive. Both the Applications stand disposed of accordingly.

[PRAVIN S. PATIL, J.]

vijaya