

**2022 LiveLaw (SC) 932**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**A.S. BOPANNA; J., PAMIDIGHANTAM SRI NARASIMHA; J.**

03<sup>rd</sup> November, 2022

CIVIL APPEAL No. of 2022 (arising out of SLP(C) No. 33638/2017)

**BALU KRISHNA CHAVAN *versus* THE RELIANCE GENERAL INSURANCE COMPANY LTD. & ORS.**

**Motor Accident Compensation Claims - If the liability of the Insurance Company is decided and they are held not to be liable, ordinarily, there shall be no direction to "pay and recover" - In all cases such order of "pay and recover" would not arise when the Insurance Company is not liable but would, in the facts and circumstances, be considered by this Court to meet the ends of justice.**

(Arising out of impugned final judgment and order dated 11-10-2017 in AS No. 10371/2017 passed by the High Court of Judicature at Bombay At Aurangabad)

*For Petitioner(s) Mr. Amol Nirmalkumar Suryawanshi, AOR Mr. Ninad Lande, Adv.*

*For Respondent(s) Mr. Abhishek Gola, Adv. Mr. Sudhir Naagar, AOR Mr. Rajeev Maheshwaranand Roy, AOR*

**ORDER**

1. Leave granted.
2. The appellant is before this Court assailing the judgment dated 11.10.2017 passed by the High Court of Judicature at Bombay, Bench at Aurangabad.
3. No doubt, as indicated by the learned counsel for the Respondent-Insurance Company, what has been assailed herein, is only the Order passed in the Review Petition and the Order passed in the Appeal, has not been assailed. Even that be so, we deem it appropriate to consider the instant case for the reason that the only issue for consideration herein, is as to whether the Respondent-Insurance Company should be directed to "pay and recover" in the facts arising in the case.
4. In that view, we have heard the learned counsel for the parties and perused the appeal papers.
5. On the facts, as noticed, the accident having occurred, the appellant herein being an occupant of the Truck, which was involved in the said accident, bearing number as MH-12/CH-4001 are not in dispute. The said vehicle had dashed against the Truck bearing number MH-12/7830. The appellant-claimant had thus, contended that the driver of the vehicle in which the appellant was traveling, was rash and negligent, which had in turn, caused the accident.
6. It is in that background that the matter had proceeded before the Tribunal, and the Tribunal having held that the driver of the vehicle bearing number MH-12/CH-4001 guilty of being rash and negligent, had fixed the liability in such manner.
7. However, considering the fact that the appellant was a gratuitous passenger in the said vehicle, the Respondent-Insurance Company was not liable to reimburse the compensation. Though, the Motor Accidents Claims Tribunal (*for short 'MACT'*) had not taken this aspect of the appellant being a gratuitous passenger into consideration, the High Court while considering the appeal filed by the respondent-Insurance Company, had arrived at the conclusion that the Insurance Company is not liable to pay the

compensation. It is in that view, the appellant had filed a review petition, which was also dismissed.

8. Hence, the only aspect for our consideration herein, is as to whether in the facts and circumstances of the present case, an order to direct the Insurance Company to “pay and recover”, is required to be made. On this aspect, the law is well settled that if the liability of the Insurance Company is decided and they are held not to be liable, ordinarily, there shall be no direction to “pay and recover”. However, in the facts and circumstances arising in each case, appropriate orders are required to be made by this Court to meet the ends of justice.

9. In the instant case, the appellant has relied on the **judgment dated 21.02.2017 passed by this Court in Civil Appeal No(s).3047 of 2017 titled as “Manuara Khatun & Ors. Vs. Rajesh Kr. Singh & Ors”**. In the said case also, a Bench of this Court, having referred to the earlier decisions in Para-15 and 16 of that Judgment, has concluded that normally, there would be no order to “pay and recover”. However, in the said facts, this Court, to meet the ends of justice, had taken into consideration the fact situation though, the claimant therein, was a ‘gratuitous passenger’ and had kept in view that the benevolent object of the Act and had directed the payment by the Insurance Company and to recover the amount.

10. Therefore, on the legal aspect, it is clear that in all cases such order of “pay and recover” would not arise when the Insurance Company is not liable but would, in the facts and circumstances, be considered by this Court to meet the ends of justice.

11. If this aspect of the matter is kept view, in the instant facts, it is noticed that the appellant, as on the date of the accident, was aged about 19 years and due to the injuries suffered in the accident by him, his left leg was amputated below the knee.

12. Even, if the contention that the appellant was in the vehicle getting trained to be as a cleaner, is not taken into consideration, the fact remains that any other avocation that is to be undertaken by the appellant would involve physical labour which the appellant will not be able to perform and in such circumstance, if the appellant is not able to realise the amount of compensation awarded in his favour at this stage from the owner of the vehicle, the appellant would be prejudiced. However, the Insurance Company, if ordered to pay to the appellant and recover it from the owner of the vehicle, it would not be prejudiced to that extent.

13. Therefore, keeping all aspects in view, and not making this case as a precedent, but, only to serve the ends of justice in the facts of this case, we direct that respondent no.1 (Insurance Company) to deposit the compensation amount before the MACT within eight weeks from the date of the receipt of a copy of this judgment, whereupon, the MACT shall disburse the amount of compensation to the appellant.

14. The respondent no.1 (Insurance Company) is reserved the liberty to recover the compensation from the owner of the vehicle.

15. In terms of the above directions, the appeal is disposed of.

16. Pending application(s), if any, shall stand disposed of.