IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1462 OF 2014
WITH
CIVIL APPLICATION NO. 5944 OF 2015

Royal Sundaram Alliance Insurance Co. Ltd.,
Subramaniam Building II Floor,
No. 1 Club House Road, Annasalai,
Chennai-600 002,
Through its Authorized Officer ...APPELLANT
(Orig. Resp. No. 2)

VERSUS

1) Naginabegum W/o Sayyed Shoukat,
Age: 32 Yrs., Occ. Household,
R/o Sarfarajnagar, Parbhani,
Tq. Dist. Parbhani

2) Miss. Anjumkausar D/o Sayyed Shoukat,
Age: 14 Yrs., Occ. Education,
Minor U/g of real mother Resp. No. 1
R/o as above

3) Miss. Sayyed Asma Fathma D/o Sayyed Shoukat,
Age: 10 Yrs., Occ. Education,
Minor U/g of real mother Resp. No. 1
R/o as above

4) Sayyed Rehan S/o Sayyed Shoukat,
Age: 6 Yrs., Occ. Education,
Minor U/g of real mother Resp. No. 1
R/o as above

5) Sayyed Mansabbee W/o Sayeed Rahim,
Age: 62 Yrs., Occ. Household,
R/o as above ...RESP. NOS.1 TO 5
(Orig. Claimant Nos. 1 to 5)

6) Sanjay S/o Dnyanoba Sarnikar,
Age: Major, Occ. Business,
R/o Sarnath Colony, Dhar Road,
Parbhani, Tq. Dist. Parbhani ...RESP. No. 6
(Orig. Resp.No. 1)

Mr A. S. Deshpande, Advocate for appellant;
Mr A. P. Bhandari, Advocate for respondent No. 6

CORAM : N.W. SAMBRE, J.

DATE : 12th June, 2015

ORAL ORDER

The appellant – insurance company has questioned the order dated 8th April, 2013, passed by the Chairman, Motor Accident Claims Tribunal, Parbhani, below Exh.5, in Motor Accident Claim Petition No.183 of 2012, whereby the appellant and respondent no.6 herein were directed to pay jointly and severally an amount of Rs.50,000/- towards 'no fault liability', within two months from the date of passing of the order, failure whereof shall carry interest on the said amount @ 6% per annum.

2. Mr Deshpande, learned Counsel appearing on behalf of the appellant, while strenuously objecting the findings recorded by the Claims Tribunal, would urge that the claim as sought to be canvassed against the insurance company is not sustainable as there is fundamental defect. According to him, the policy itself was not issued by the insurance company and in view thereof, it is the responsibility of the owner of the vehicle to make good the loss. He would further urge that the above referred aspect is lost sight of by the Tribunal and, therefore, prayed to set

aside the order impugned herein.

3. With the assistance of the learned Counsel appearing on behalf of the appellant and the vehicle owner, I have gone through the observations made by the Tribunal. It is noticed that the insurance company, vide cheque dated 2nd April, 2012 has accepted the premium for the period from 2nd April, 2012 to 1st April, 2013. The date of incident is 16th April, 2012.

4. The above referred aspects are already gone gone into by the Tribunal, particularly in the background of the law laid down in the matter of New India Assurance Co. Ltd. vs. Poonam Nilesh Thakur & ors. , reported in 2007 ACJ 1032.

5. In my opinion, the Tribunal has to decide the claim in relation to no fault liability on the basis of *prima facie* case. The facts as were brought before the Tribunal were taken into account for passing the order at this stage, whereby the appellant - insurance company and respondent no.6 herein have been directed to an amount of Rs.50,000/- towards no fault liability.

6. Without prejudice to the rights of the insurance company to resist the main claim, in my opinion, it will be appropriate to maintain the order

passed by the Tribunal.

7. It will be open for the appellant – insurance company to raise its defence on merit in the trial. The claim be decided by the Tribunal on its own merits without being influenced by the observations made in this order. The amount, which is deposited in this Court , is directed to be transmitted to the Tribunal, in M.A.C. P. No.183 of 2012.

8. Thus, the First Appeal fails and stands dismissed with no order as to costs.

9. In the light of dismissal of the First Appeal, Civil Application No.5944 of 2015 does not survive and stands disposed of.

(N.W. SAMBRE, J.)

amj