IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

First Appeal No. 2339 of 2012

ICICI Lombard General,
Insurance Company Ltd.,
Through Its Legal
Manager at Adalat Road,
Aurangabad. .. Appellant.

versus

1. Komal w/o. Vithalsingh Meher,
Aged about 25 years,
Occupation : Household,
R/o. Limbayat,
Post : Lakhmapur,
Taluka : Mahoor,
District : Nanded.

2. Kaushalyabai w/o. Ramlal Meher,
Aged about 60 years,
Occupation : Household,
R/o. Liya, Post : Pimplegaon (Renuka),
Taluka : Bhokardan,
District : Jalna.

3. Chandram s/o. Ashanna Narsappa,
Age : Major,
Occupation : Business,
R/o. H.No. 2-1-72, Kajiwada,
Bhadkal Gate, Aurangabad. .. Respondents.

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Mr. Venkatesh V. Mate & Mr. L.S. Shaikh, Advocates, for the appellant.

Mr. Gajanan G. Kadam, Advocate, for respondent no.1.

Mr. S.R. Pande, Advocate, for respondent no.2.

Mr. P.F. Patni, Advocate, for respondent no.3.

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With

First Appeal No. 444 of 2014

Kaushalyabai w/o. Ramlal Meher,
Age : 65 years,
Occupation : Household,
R/o. Liya, Post : Pimplegaon (Renuka),
Taluka : Bhokardan,
District : Jalna. .. Appellant.

versus

1. Chandram s/o. Ashanna Narsappa,
   Age : Major,
   Occupation : Business,
   R/o. H.No. 2-1-72, Kaijwada,
   Bhadkal Gate, Aurangabad.

2. Manager, ICICI Lombard Motor
   Insurance,
   through its Legal Manager at
   Adalat Road,
   Aurangabad.

3. Komal w/o. Vithalsingh Meher,
   Age : 30 years,
   Occupation : Household,
   R/o. Limbayat,
   Post : Lakhmapur,
   Taluka : Mahoor,
   District : Nanded. .. Respondents.

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Mr. Shashikant R. Pande, Advocate, for the appellant.

Mr. P.F. Patni, Advocate, for respondent no.1.

Mr. Abhijit Choudhari, Advocate, for respondent no.2.

Mr. Gajanan G. Kadam, Advocate, for respondent no.3.

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With

First Appeal No. 638 of 2014

Chandram s/o. Ashanna Narsappa,
Age : 52 years,
Occupation : Business,
Owner of Tipper Truck No. MH-20/W-6252,
R/o. H.No. 2-1-72, Kaziwada,
Bhadkal Gate, Aurangabad. .. Appellant.

versus

1. Smt. Devkabai wd/o. Devachand Rajput (Ghunawat), Age : 53 years, Occupation : Nil, R/o. Liha, Taluka : Bhokardan, District : Jalna.

2. Smt. Anita @ Jamuna wd/o. Gokulsingh Rajput (Ghunawat), Age ; 20 years, Occupation : Household, R/o. Liha, Taluka : Bhokardan, District : Jalna.

3. Kum. Anju d/o. Gokulsingh Rajput (Ghunawat), Age : 1 years, minor, u/g. of Respondent No.2.

4. Alamkhan s/o. Kamalkhan Pathan, Age : 32 years, Occupation : Driver, R/o. Karadgaon, Taluka : Ghansawangi, District : Jalna.

5. ICICI Lombard General Insurance Co. Ltd., through its Legal Manager, Keshavrao Khade Marg, "Zenith House", 1st Floor, Mahalaxmi, Mumbai, Vide C/Note No. 53432277, w.e.f. 31-01-2008 TO 30-01-2009. .. Respondents (Nos.1 to 3 - Original petitioners & Nos.4 and 5 - Original opponent nos.1 & 3)

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Mr. P.F. Patni, Advocate, for the appellant.

Mr. S.R. Sakhare, Advocate, for respondent no.1.

Respondent nos.2 and 3 unserved.

Respondent no.4 served (Absent).

Mr. Venkatesh V. Mate & Mr. A.G. Choudhari, Advocates, for respondent no.5.

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CORAM : A.V. NIRGUDE, J.

DATE : 3RD AUGUST 2015

ORAL JUDGMENT :

1. Heard learned Counsel for respective parties.

2. Admit. By consent of the learned Counsel for the parties, heard finally.

3. All these appeals are interconnected. They arise from one motor accident in which two persons died. Their next of kins filed two different two different Motor Accident Claim Petitions at two different Motor Accident Claims Tribunals. Unfortunately, in both the cases, learned Members of the Tribunals were probably not aware that connected petitions are pending elsewhere. Had they been aware of this fact, they would have referred the case to the High Court for transfer of cases. Even common parties, which are Insurance Company and owner of the vehicle, did not raise this point before the Tribunals or did not make application for getting these two petitions clubbed together and transferred to one Tribunal. Two different views are expressed in two judgments.

4. The main bone of contention of the Insurance Company was that the insured owner of the vehicle allowed the vehicle to run on public street without ensuring permit required under Section 66 of the Motor Vehicles Act, 1988. Unfortunately, even this defence was raised belatedly. In written statement, this defence was permissible under Section 149 of the Motor Vehicles Act, but the same was not raised. The learned Member of the Nanded Tribunal discarded the defence altogether and awarded compensation to one of the claimants. The learned Member of the Tribunal at Aurangabad accepted the defence, though belatedly given, and directed the Insurance Company to pay the compensation first and to recover it subsequently from the owner. One of the claimants i.e. mother of one of the deceased, was denied compensation only on the ground that she had withdrawn her claim petition from Aurangabad Tribunal and depended on the petition filed by co-claimant, her daughter-in-law, filed at Nanded Tribunal.

5. The only question that arises for my consideration is, whether both the cases deserve a remand. The answer to the above question has to be in affirmative. It is apparent on record, that the Insurance Company as well as the owner of the vehicle both showed their utter negligence in defending the case. The owner did not come before the court and did not file written statement. On the other hand, written statement of Insurance Company was grossly inadequate, inasmuch as, defence required to be taken was not raised in it. Nonetheless, in my view, following things are required to be done at the Tribunal level :-

(a) Both the cases, as far as possible, should be tried by one Tribunal.

(b) In both the cases, written statement of all the respondents should be brought on record and a fresh opportunity to defend the case should be given to them.

(c) There are number of issues that would arise if proper written statements are filed. As indicated by submissions made at Bar, following questions arise in these cases :-

(i) Whether there is breach of policy condition ?

(ii) Whether the Insurance Company is partly responsible for such breach ?

(iii) Whether this is a case of contributory negligence ?

The Appeals, therefore, should be allowed by remanding both the cases to one Tribunal.

6. In the result, the Appeals are partly allowed.

(A) The judgment and award passed by the Member of the Motor Accident Claims Tribunal, Aurangabad, dated 15-1-2011, in M.A.C.P. No. 554/2008, so also, the judgment and award passed by the Member of the Motor Accident Claims Tribunal, Nanded, dated 22-8-2012, in M.A.C.P. No. 322/2008, are quashed and set aside, and both the Motor Accident Claim Petitions are remanded back to the Motor Accident Claims Tribunal at Aurangabad, for its decision afresh, on merits, in the light of the observations made in this judgment.

(B) This order is passed subject to payment of costs by the Insurance Company and the owner of the vehicle. Each of them i.e. the Insurance Company and the owner of the vehicle shall contribute Rs. 50,000/- [Rupees fifty thousand] as costs. This costs shall be paid to all the claimants in equal proportion. That means, Rs. 50,000/- shall be paid to the claimants in case of deceased Vithalsingh and Rs. 50,000/- shall be paid in the case of deceased Gokulsing. The appellant in First Appeal No. 444 of 2014 shall be treated as claimant in deceased Vithalsingh's case and her name should be mentioned as claimant.

(C) The amounts deposited by the Insurance Company and the owner of the vehicle, in this Court, i.e. Rs. 25,000/-, each, shall be transferred to the Motor Accident Claims Tribunal at Aurangabad.

(D) The amount of costs payable by the Insurance Company as well as owner of the vehicle shall be adjusted from the amounts they had deposited in this Court at the time of filing of the appeals i.e. Rs. 25,000/-, each. That means, the Insurance Company as well as owner of the vehicle shall deposit additional amount of Rs. 25,000/-, each, in the Tribunal, so as to make it Rs. 50,000/-, each, towards costs, as directed above. It shall be distributed amongst the claimants in the proportion as mentioned in para (B) above.

(E) The amount of award deposited by the Insurance Company, in this Court, shall be transferred to the Motor Accident Claims Tribunal at Aurangabad, which shall deposit the same amount in any nationalized Bank as a fixed deposit. The withdrawal of the amount shall be subject to the outcome of the petitions.

(F) The learned Member of the Motor Accident Claims Tribunal, Aurangabad, shall decide both the petitions, on their own merits, as expeditiously as possible, and preferably by the end of February 2016.

7. The Appeals are accordingly disposed of.

(A.V. NIRGUDE)
JUDGE

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