**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1228 OF 2008

1. Suman W/o. Vaijinath Chavan,
Age:28 years, Occu.: Labour & H.H.,
R/o. Mallapur Tanda, Tq. Udgir,
Dist. Latur,

2. Sagar S/o. Vaijinath Chavan,
Age:6 years, Occu.:Education,

3. Geeta D/o. Vaijinath Chavan,
Age:5 years, Occu.:Education,

4. Vilas S/o. Vaijinath Chavan,
Age:4 years, Occu.:Education,
appellants No.2 to 4 are minors
and U/g. of Appellant No.1 who
is real mother.

**...APPELLANTS
(Orig. Claimants)**

VERSUS

The New India Assurance Co. Ltd.
Through it's Branch Manager,
Chandra-Nagar, Latur, Dist. Latur

**...RESPONDENT
(Orig. Respondent)**

...

Mr. R.K. Ashtekar, Advocate for Appellants;
Mr. A.B. Gatne, Advocate for Respondent/Sole.

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CORAM: P.R.BORA, J.

DATE : December 9th, 2016

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ORAL JUDGMENT:

1. The present Appeal is filed challenging the order passed by the Motor Accident Claims Tribunal at Udgir in M.A.C.P. No.62/2003 decided on 31st December, 2005. Vide the impugned order, the Tribunal has directed the claimants to repay the amount of Rs.50,000/- (Rs. Fifty thousand) paid to them by the Insurance Company in compliance of the order passed under Section 140 of the Motor Vehicles Act with the interest at the rate of 9 per cent per annum from the date of deposit of the amount till its realization.

2. Shri Ashtekar, learned Counsel appearing for the appellant submitted that a patently illegal order has been passed by the Tribunal. Referring to the provisions under Sections 140 and 141 of the Motor Vehicles Act, and relying upon the judgment of the Honourable Supreme Court in the case of Deepal Girishbhai Soni vs. United India Insurance Company Limited Baroda ((2004) 2 RLW (SC) 252) and also relying upon the judgment of this Court in Oriental Insurance Co.Ltd. Vs. Chandrabhagabai w/o

Wamanrao Waybhase (2008 (3) Mh.L.J. 883) submitted that in no case the refund could have been directed by the Tribunal.

2. Shri Gatne, learned Counsel appearing for the respondent has supported the impugned judgment. Learned Counsel has relied upon the judgment of this Court in the case of New India Assurance Company Ltd. vs. Minguel Lourenco Correia and others (1986 Mh.L.J. 242).

3. After having considered the submissions advanced by the learned Counsel for the respective parties, and having gone through the concerned legal provisions and the judgments relied upon by the parties, it does not appear to me that any case is made out by the appellant so as to cause interference in the impugned order. The judgments which have been relied upon by the learned Counsel for the appellant are quite on different facts and the ratio laid down in the said judgments cannot be made applicable to the facts of the present case. Admittedly, the Claim Petition was filed by the legal heirs

of deceased Vaijinath Chavan who was the owner of the said auto rickshaw and he himself was driving the same when the accident happened. It is further not in dispute that the Insurance policy pertaining to the said vehicle does not cover the risk of owner-cum-driver. In view of the fact that no risk of deceased was covered under the Insurance policy, no fault can be found in the order passed by the Tribunal, whereby it has dismissed the petition preferred against the Insurance Company. Since the Insurance Company was not held liable, no fault can be found in the further orders passed by the Tribunal, directing refund of the amount paid by the Insurance Company to the claimants towards No Fault liability compensation.

4. The Tribunal has relied upon the judgment in the case of New India Assurance Company Ltd. vs. Minguel Lourenco Correia and others (cited supra). Paragraph No.10 of the said judgment reads thus:

> " This does not mean, however, that it is not open to the insurance company to raise any or all the defences which are available to it under the Act,

> particularly that under the terms and conditions of the insurance policy, the insurance company is not liable to pay any compensation. But this aspect of the case is to be dealt with in the course of the proceedings for compensation under section 110 of the Act. Thus, if ultimately the company succeeds in establishing that under the terms and conditions of the insurance policy, it is not liable to pay compensation, then, the insurance company will be entitled to get money paid under Section 92-A of the Act repaid to it by the owner of the vehicle. A direction to this effect has necessarily to be made by the Tribunal itself while disposing of the application under Section 110 of the Act, so as to avoid the insurance company to be dragged in further litigation. "

In view of the law as laid down by the High Court in the aforesaid judgment, I find no infirmity in the order so passed. The Appeal, being devoid of merit, deserves to be dismissed and is accordingly dismissed, however, without any order as to the costs.

(P.R.BORA)
JUDGE

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