

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2507 OF 2010

United India Insurance Co. Ltd;
Branch Manager, Jalgaon Branch,
Through it's Divisional Manager,
Jalgaon Divisional Office II, 28,
Hareshwar Nagar, Ring Road,
At and District Jalgaon-425002.

... Appellant
(Ori.Opp. No. 5)

Versus

1. Smt. Sumanbai Dhanraj Patil
Age : Major, Occ : Household,
2. Shri Bapu Dhanraj Patil,
Age : 17 years, Occ : Education,
3. Kum. Bharati Dhanraj Patil
Age : 15 years, Occ : Education,

Res. No. 2 and 3 being minor
through their mother Res. No.1.

Res. No. 1 to 3 r/o Shirsoli Pra. Bo.
Taluka and District Jalgaon.

4. Shri Gopal Bhagwan Dhangar
Age : Major, Occ : Service (Driver),
5. Shri Uttam Tulshiram Bari
Age : Major, Occ : Business (Owner)
6. Shri Sharad Shambhu Dhangar
Age : Major, Occ : Service (Driver)
7. Ratan Raghunath Bari
Age : Major, Occ : Business (Owner)

Respondent Nos. 4 to 7
r/o Shirsoli Pra. Bo.
Taluka and District Jalgaon.

... Respondents

WITH
FIRST APPEAL NO. 2778 OF 2010

United India Insurance Co. Ltd;
Branch Manager, Jalgaon Branch,
Through it's Divisional Manager,
Jalgaon Divisional Office II, 28,
Hareshwar Nagar, Ring Road,
At and District Jalgaon-425002.

... Appellant
(Ori.Opp. No. 5)

Versus

1. Smt. Jijabai Suklal Patil
Age : 48 years, Occ : Household
2. Ravindra Suklal Patil
Age : years, Occ : Education
3. Sunil Suklal Patil
Age : years, Occ : Education
4. Ushabai Ganesh Patil
Age : Major, Occ : Education

Res. No. 2 to 4 being minor
through their mother Res. No.1.

Res. No. 1 to 4 r/o Shirsoli Pra. Bo.,
Taluka and District Jalgaon.

5. Shri Gopal Bhagwan Dhangar
Age : Major, Occ : Service (Driver),
6. Shri Uttam Tulshiram Bari
Age : Major, Occ : Business (Owner)
7. Shri Sharad Shambhu Dhangar
Age : Major, Occ : Service (Driver)
8. Ratan Raghunath Bari
Age : Major, Occ : Business (Owner)

Respondent Nos. 5 to 8
r/o Shirsoli Pra. Bo.
Taluka and District Jalgaon.

... Respondents

Advocate for the Appellant : Mr. A. B. Gatne

Advocate for the Respondent Nos. 1 to 3 in FA No. 2507 of 2010 and for respondent Nos. 1 to 4 in FA No. 2778 of 2010 : Mr. A. I. Deshmukh

Advocate for the Respondent Nos. 5 & 7 in FA No. 2507 of 2010 and for respondent Nos. 6 & 8 in FA No. 2778 of 2010 : Mr. V. Y. Patil

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CORAM : V. K. JADHAV, J.
DATED : 27th APRIL, 2016

ORAL JUDGMENT:-

1. Heard learned counsel for the respective parties.
2. Both these appeals arise out of one and the same accident, hence, can be decided by this common judgment.
3. The appellant-insurer, by way of these appeals, is challenging the orders dated 28.06.2010 passed below Exh.6 with Exh.21 in M.A.C.P. No. 409 of 2008 and below Exh.6 with Exh.22 in M.A.C.P. No. 408 of 2008 respectively, by learned Member, Motor Accident Claims Tribunal, Jalgaon.
4. Brief facts, giving rise to the present appeals, are as follows:-
 - a) The accident had taken place on 27.3.2008. Deceased Suklal and Dhanraj were travelling in a matador bearing registration No. MH-18-A-7358 by Dharangaon Erandol

road. After attending one ceremony, they were coming back to village Shirsoli by the said road. On way, at about 5.00 p.m. while returning to village Shirsoli, said matador bearing registration No. MH-18-A-7358 dashed against another matador bearing registration No. MH-18-B-7094. In consequence of which, deceased Suklal and Dhanraj both had sustained grievous injuries. They were immediately shifted to hospital where they succumbed to the injuries. Thus, their legal representatives preferred two separate claim petitions before Motor Accident Claims Tribunal, Jalgaon. Legal representatives of deceased Dhanraj preferred M.A.C.P. No. 409 of 2008, whereas legal representatives of deceased Suklal preferred M.A.C.P. No. 408 of 2008. Pending the main claim petitions, the claimants had filed application Exh.6 separately in the respective claim petitions for interim relief under No Fault Liability. Learned Member of M.A.C.T. Jalgaon, by its impugned orders, as aforesaid, allowed applications Exh.6 in both the claim petitions and thereby directed respondents to pay jointly and severally an amount of Rs.50,000/- to the respective claimants within a period of four weeks, failing which, they shall be liable to pay interest at the rate of 9% per annum. So far as applications

Exh.21 and Exh.22 in respective claim petitions, filed for deletion by the present appellant-insurer is concerned, those applications came to be rejected by the said common orders.

- b) Being aggrieved by the said orders, the respondent-insurer has preferred these two separate appeals.

5. Learned counsel for the appellant-insurer submits that *prima facie*, no case is made out against the appellant-insurer to make it liable to pay compensation even under No Fault Liability. As per police papers, some villagers from village Shirsoli had gone to attend one marriage ceremony at some another village and for that purpose, they were travelling in two matadors as described above, which are admittedly goods carriage vehicles. Even though both the deceased persons were travelling in matador bearing registration No. MH-18-A-7358 and another matador bearing registration No. MH-18-B-7094 was proceeding ahead of it, the accident had taken place due to fault of drive of matador bearing registration No. MH-18-A-7358 alone and the facts emerging from police papers unequivocally indicates that the driver of matador bearing registration No. MH-18-B-7094 was not at fault. Learned counsel submits that even after accident had occurred, crime was registered against driver of vehicle bearing

registration No. MH-18-A-7358 alone, and after due investigation, charge sheet came to be submitted against him only. Learned counsel further submits that the vehicle matador bearing registration No. MH-18-B-7094 is insured with appellant-insurer and the appellant-insurer is unnecessarily saddled with the liability to pay compensation. Learned counsel submits that the provisions of Section 140 of Motor Vehicles Act, 1988 does not contemplate that an insurer company shall also be liable to deposit the amount while it has no obligation whatsoever to do so in terms of Section 147(2) of the said Act. Learned counsel in the alternate submits that if this court comes to the conclusion to confirm the orders passed by the Tribunal, in that event, respondents may be directed to furnish an undertaking before the Tribunal to refund the amount paid by appellant-insurer to the claimants in case the appellant-insurer is exonerated from liability to pay the compensation. Learned counsel also submits that in the alternative, this court may observe that the Tribunal may take an appropriate decision in this regard at the time of final adjudication of the claim petitions under fault liability.

6. Learned counsel for the appellant-insurer, in order to substantiate his submissions, placed reliance on the decisions in following cases:

I) ***Yallwwa (Smt.) and others vs. National Insurance Co.***

Ltd. and another, reported in **(2007) 6 SCC 657**,

- II) ***National Insurance Co. Ltd. vs. Deorao Bhayyaji Patne and Ors.***, reported in **2003 (1) ALL MR 99**,
- III) ***New India Assurance Co. Ltd. Pune vs. Smt. Savitribai Tukaram Londhe and Others***, reported in **1997 (1) Mh.L.J. 315** and
- IV) ***New India Assurance Co. Ltd. vs. Asha Rani and others***, reported in **2002 AIR SCW 5259**.

7. Learned counsel for the respondents-claimants in both the appeals submits that accident had taken place on 27.3.2008 and even then the claimants have not received any amount as compensation by way of interim relief, since stay to the impugned orders is granted by this Court and since record and proceedings have been called by this court, the Tribunal could not proceed with the claim petitions. Consequently, since 2008, claimants have not received any amount as compensation. Learned counsel submits that both the deceased persons were travelling in a vehicle matador bearing registration No. MH-18-A-7358. Another vehicle bearing registration No. MH-18-B-7094 is insured with appellant-insurer and in that way, there is no breach of condition of policy and since the vehicle bearing registration No. MH-18-B-7094 was also involved in the accident, the appellant insurer is liable to pay compensation jointly and severally along with other respondents. Learned counsel

submits that the Tribunal has therefore, rightly allowed application Exh.6 in both the claim petitions. No interference is required.

8. Learned counsel for the respondents-owners submits that the Tribunal has fixed the liability jointly and severally on all respondents to pay compensation under No Fault Liability to the claimants. Learned counsel submits that since liability is joint and several, claimants may proceed against any of the respondents to recover the amount as directed by the Tribunal. Since application Exh.6 in both the claim petitions have been filed for claiming compensation under No Fault Liability, appellant-insurer is not entitled to raise defence of fault. Learned counsel submits that there is no substance in the appeals and both the appeals are thus, liable to be dismissed.

9. It is not disputed that the vehicle matador bearing registration No. MH-18-B-7094 was also involved in the accident. It is clear from the police papers and on the basis of the other documents such as Comp. Form A etc. that accident had arisen out of use of motor vehicles bearing registration No. MH-18-A-7358 and MH-18-B-7094. So far as claim under No Fault Liability is concerned, appellant-insurer is not entitled to raise grounds of fault. At this stage, when the application for interim relief under No Fault Liability is under consideration, appellant-insurer cannot raise ground that driver of

another vehicle involved in the accident was responsible for the accident alone and driver of the vehicle which is insured with appellant-insurer was not at fault. Furthermore, it appears that both the deceased persons were not travelling in the vehicle matador bearing registration No. MH-18-B-7094.

10. In view of the above discussion, I do not find any fault in the impugned orders. Learned Member of the Tribunal has rightly allowed applications Exh-6 and directed respondents to pay compensation under No Fault Liability jointly and severally to the claimants. However, the Tribunal, while deciding the claims of fault, may consider all grounds raised by the appellant-insurer and take appropriate decision on merits, in accordance with law. Since record and proceedings have been called by this Court in both the appeals, both the claim petitions are pending before the Tribunal since 2008. In view of this, it would be appropriate to direct the Tribunal to decide both the claim petitions as expeditiously as possible in a time bound manner. In view of the above, I pass the following order:-

O R D E R

- I. First Appeal No. 2507 of 2010 and First Appeal No. 2778 of 2010 are hereby dismissed with costs.
- II. The Member, M.A.C.T. Jalgaon is hereby directed to dispose of M.A.C.P. Nos. 409 of 2008 and 408 of 2008

as expeditiously as possible and preferably within a period of one year from today.

- III. The respondents-original claimants in both the claim petitions are permitted to withdraw the amount deposited by the appellant-insurer before this Court along with accrued interest, if any, during pendency of the appeals.
- IV. The record and proceedings be sent to the Tribunal forthwith.
- V. Both the First Appeals are accordingly disposed of.

(V. K. JADHAV, J.)

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