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

FIRST APPEAL NO. 2885 OF 2016

UNITED INDIA ASSURANCE COMPANY LTD.
THROUGH ITS DEPUTY MANAGER TP HUB,
RAHUL NARAYAN KULKARNI
VERSUS
AZIZ ABDUL REHMAN

...
Advocate for Appellant : Mr. Swapnil S. Rathi.
Advocate for Respondents : Ms. Anuradha S. Mantri.
...

CORAM : **V. K. JADHAV, J.**
DATE : 16th February, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award dated 11th May, 2016 passed by the learned Chairman of the Motor Accident Claims Tribunal, Aurangabad in MACP No.201 of 2011, the original sole Respondent / Insurer has preferred this appeal.

3 Brief facts giving rise to the present appeal are as follows:

a) On 7th November, 2010, the Respondent / Claimant was driving his jeep bearing registration No.MH-20-AA-2760. However, one stray dog has suddenly crossed the road and in consequence of which, the jeep got imbalanced and turned turtled. The Respondent / Claimant has suffered several injuries. He was admitted in the hospital and incurred huge medical expenses. Further, the injuries sustained by him in the accident also resulted into permanent disablement to the extent of 12%. The Respondent / Claimant has preferred MACP No.201 of 2011 against the Insurer of his own vehicle for grant of compensation under the various heads.

b) The Appellant / Insurer has strongly resisted the claim petition by filing the written statement. It has contended that the Respondent / Claimant himself is the owner of the vehicle involved in the accident and the accident had occurred on his own fault. It has thus contended that the claim petition itself is not maintainable though filed under Section 163-A of the Motor Vehicles Act. It has also contended that the policy of the vehicle involved in the accident does not cover the risk of Respondent / Claimant being the owner of the vehicle. The learned Chairman of the Tribunal vide its impugned judgment and award, awarded the compensation of Rs.1,00,000/- by considering the extra premium paid by the Respondent / Claimant under the clause of “Personal Accident”. Aggrieved by the same, the present appeal is preferred.

3 The learned for the Appellant submits that in a case ***Ningamma and another Vs. United India Insurance Co. Ltd.***, reported in, ***2009 ACJ 2020***, where the question falls for consideration, “whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of the Motor Vehicles Act and also where the Insured, who issued the insurance policy would be bound to indemnify the deceased or his legal representatives and after considering the provisions of Section 163-A of the Motor Vehicles Act, the Supreme Court has concluded the issue that the claim petition itself is not maintainable. The learned counsel submits that the claim filed by the person who stepped into the shoes of the owner of the motor vehicle is not considered by the

Supreme Court. In the instant case, the Respondent / Claimant himself is the owner of the vehicle involved in the accident and he has preferred the claim petition against the Insurer of his own vehicle for the injuries sustained in the self accident without involving any other vehicle in the accident. The learned counsel submits that though the learned Chairman of the Tribunal has not awarded any compensation under the provisions of Section 163-A of the Motor Vehicles act to the Respondent / Claimant, considered the extra premium paid by the Respondent / Claimant and awarded the compensation of Rs.1,00,000/-. The learned counsel submits that in view of the said clause for which the extra premium was accepted by the Appellant / Insured, there is a personal accident cover for the owner – driver and the compensation to the extent of 100% can only be awarded in the case of permanent total disablement from the injuries. In the instant case, the Respondent / Claimant has only sustained 12% of the disablement and by any stretch of imagination, the same cannot be treated as permanent total disablement. The Respondent / Claimant is not entitled for any compensation.

4 The learned counsel for Respondent / Claimant submits

that in view of the personal accident cover to the Respondent / Claimant by accepting the extra premium, the learned Chairmant of the Tribunal has rightly awarded the compensation of Rs.1,00,000/-. No interference is required.

5 The learned Chairman of the Tribunal has referred the policy document Exhibit – 26 and further observed that the Respondent / Claimant has paid the premium of Rs.100/- for the risk of owner and driver. The Appellant / Insurer has examined its officer Mahendrasing Virat at Exhibit – 26. He has also admitted the said clause of the policy. On careful perusal of the said clause and the relevant schedule, it appears that the personal accident cover for owner – driver is as per the following char–

Nature of injury		**Scale of compensation**
(i)	Death	100%
(ii)	Loss of two limbs or sight of two eyes or one limb and sight of one eye.	100%
(iii)	Loss of one limb or sight of one eye	50%
(iv)	Permanent total disablement from injuries other than named above.	100%

6 In the instant case, the Respondent / Claimant has not suffered a permanent total disablement. He has only suffered the

disablement to the extent of 12%. The learned Chairman of the Tribunal has not considered the schedule and erroneously awarded the compensation to the tune of Rs.1,00,000/-. The claim petition itself is not maintainable as per the authoritative pronouncement of the Supreme Court in the case of *Ningamma and another Vs. United India Insurance Co. Ltd.* (supra) and further as per Schedule – IV, the Respondent / Claimant is also not entitled for any amount as a compensation, the claim petition in its entirety liable to be dismissed. Hence, the following order:

O R D E R

I. The appeal is hereby dismissed. No costs.

II. The judgment and award dated 11th May, 2016 passed by the learned Chairman of the Motor Accident Claims Tribunal, Aurangabad in MACP No.201 of 2011, is hereby quashed and set aside.

III. Motor Accident Claims Petition No.201 of 2011, is hereby dismissed.

IV. The Appellant / Insured has deposited the entire amount in this Court and the same shall be refunded to the Appellant / Insurer.

V. Appeal is accordingly disposed of.

VI. Pending civil applications stand disposed of.

[V. K. JADHAV, J.]

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