IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3631 OF 2016

1) Bismillah W/o. Shaikh Aslam,
Age: 25 years, Occu. Household,

2) Ayesha D/o. Shaikh Aslam,
Age: 9 years, Occu. Education,

3) Sofiyan D/o. Shaikh Aslam,
Age: 6 years, Occu. Education,
No.2 & 3 are minors, U/g of real
mother i.e. Bismillah W/o.
Shaikh Aslam

4) Shaikh Ulfat Bee W/o. Alam,
Age: 50 years, Occu. Household,

5) Shaikh Alam S/o. Shaikh Bapuji,
Age:61 years, Occu.Nil,
All R/o. Koli Bodkha,
Taluka Paithan,
District Aurangabad. **= APPELLANTS**
(Org. Claimants)

VERSUS

1) Oriental Insurance Company Limited,
Through its Branch Manager,
1st Floor of Dena Bank,
Subhash Chowk,
Near Petrol Pump, Jalna,

2) Parmeshwar S/o. Punjaram Lihinar,
Since Deceased, through his
Legal Representatives,

2A. Sangeeta Wd/o. Parmeshwar Lihinar,
Age:41 years, Occu. Household,
R/o. At Post Katkheda, Taluka Ambad,
District Jalna,

2B Rahul S/o. Parmeshwar Lihinar,
Age:26 years, Occu. Agriculture,
R/o. As above. **= RESPONDENTS**
(Org. Respondents)

Mr. Mohit R.Deshmukh, Advocate for Appellants;
Mr.PV Balkhande, Adv. For Resp.Nos.2-A and 2-B.
Mr. MK Goyanka, Adv.for Respondent No.1.

CORAM : P.R.BORA, J.

DATE : 12th June,2017.

PER COURT :

1) Heard. With consent, taken up for final disposal at admission stage.

2) The present appeal is filed against the judgment and Award dated 19th April, 2016 passed by the Motor Accident Claims Tribunal, Jalna (for short, the Tribunal) in MACP No.98/2015.

3) The appellants had filed the aforesaid claim petition under the provisions of Section 163-A of the Motor Vehicles Act (for short the Act), claiming compensation on account of the

death of one Shaikh Aslam in a motor vehicle accident happened on 9th April, 2015 having involvement of a motor cycle belonging to present Respondent No.2 and insured with present Respondent No.1.

4) The Tribunal has passed the award only against present Respondent Nos. 2-A and 2-B, i.e. legal heirs of Respondent No.2, who was the owner of the motor cycle involved in the alleged accident.

5) Shri Deshmukh, learned Counsel appearing for the appellants, submitted that the motorcycle involved in the alleged accident belonging to deceased Respondent No.2, was duly insured with Respondent No.1-insurance company. The learned Counsel further submitted that the Tribunal though has answered all other issues in favour of the appellants while passing the Award, has not passed the award against Respondent No.1-insurance company. The learned Counsel further

submitted that the Tribunal has also not made any discussion in the impugned judgment or assigned any reasons for not passing the award against Respondent No.1-insurance company. The learned Counsel further submitted that in view of the fact that the offending vehicle was duly insured with Respondent No.1-insurance company, it was liable to indemnify the insurer, i.e. deceased Respondent No.2 and in such circumstances, the Tribunal ought to have passed an order holding deceased Respondent No.2 and Respondent No.1-insurance company jointly and severally liable to pay the amount of compensation. The learned Counsel further submitted that in view of the fact that the insurance was valid on the date of accident, in fact, the liability was on the insurance company to satisfy the award and there was no reason for the Tribunal for not passing the award against the insurance company. The learned Counsel further submitted that there is no dispute about the quantum of compensation as awarded by the Tribunal or any other finding recorded by the Tribunal. The learned Counsel, therefore, prayed for modifying the impugned award thereby holding Respondent No.1-insurance company jointly and severally liable to pay the amount of compensation to the appellants herein.

6) Shri Goyanka, learned counsel appearing for Respondent No.1-insurance company, was fair enough in submitting that there appears an inadvertent mistake on the part of the Tribunal in not passing the award against the insurance company. The learned Counsel submitted that in so far as the quantum of compensation and liability is concerned, Respondent No.1 - insurance company has not disputing both the aspects. The learned Counsel, therefore, submitted for passing appropriate orders.

7) In view of the discussion, as above, it appears that the learned Tribunal has apparently erred in not passing the Award against Respondent No.1 - insurance company. Perusal of the

impugned judgment and award shows that the Tribunal has also not made any discussion or assigned any reasons for not passing the award against the insurance company. In view of the admitted facts that the offending vehicle was duly insured with Respondent No.1-insurance company on the date of the alleged accident, in fact, there was no reason for not passing the award against Respondent No.1-insurance company. From the discussion made by the Tribunal, it is quite clear that it has not exonerated the insurance company from its liability to indemnify the insured. It, therefore, appears that inadvertent mistake has occurred by the Tribunal while passing the impugned award and the award has been passed only against owner of the offending vehicle. The mistake so occurred needs to be corrected and the appeal, therefore, deserves to be allowed. Accordingly, along with Respondent Nos.2-A and 2-B, Respondent No.1-insurance company is jointly and severally held liable to pay the amount of compensation to the appellants as determined by the Tribunal in terms of the impugned Award. Save and except, making the insurance company liable to pay the amount of compensation to the appellants, the remaining part of the Award needs no interference and is kept as it is.

8) The first appeal stands allowed in aforesaid terms. Pending Civil Application,if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/