

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

FIRST APPEAL NO. 339 OF 2017

UNITED INDIA ASSURANCE CO. LTD. THR ITS ADM.
OFFICER TP HUB MAHENDRA PRATAPSIH VIRAT

VERSUS

KANTABAI DNYANOBA KAMBLE AND ORS

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Advocate for Appellant : Mr S S Rathi

Advocate for Respondents : Mr S. B. Gastgar

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WITH

CA/3713/2017 IN FA/339/2017

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CORAM : V.K. JADHAV, J.

Dated: June 22, 2017

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the order dated 13.5.2016 passed below exh.5 in M.A.C.P. No.39/2014, by the Member, Motor Accident Claims Tribunal, Udgir, the original respondent no.2-insurer has preferred this appeal. The appellant-insurer has challenged the order below Exh.5 passed under 'No Fault Liability'.
3. Learned counsel for the appellant submits that, auto rickshaw involved in the accident is insured under

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the Act only policy and risk towards the occupants is not covered. The deceased was travelling in the auto-rickshaw (private) as a passenger and as such his risk is not covered under the policy.

4. Learned counsel for respondent-original claimant submits that the appellant-insurer has raised this defence and as such the burden is on the appellant-insurer to prove the same in the main claim.

5. The appellant-insurer has placed on record the policy and certificate of insurance. On perusal of the same, particularly, the schedule of Premium, it appears that, premium has been accepted for T.P basic, compulsory PA to owner-driver amounting to Rs.2.00 lacs and WC to employee 1. Prima facie it appears that, risk of the occupants in the autorickshaw is not covered under the policy. However, the main claim under the Fault Liability is pending before the tribunal. In view of the same, it would be just and proper, if the tribunal is directed to dispose of the main claim under the Fault

Liability, expeditiously in time bound manner and disbursement of the amount deposited before this Court would be subject to the outcome of the said main claim on Fault liability. Hence, following order.

O R D E R

1. Appeal is hereby partly allowed. No costs.
2. The order dated 13.5.2016 passed by the Member, Motor Accident Claims Tribunal, Udgir in MACP No.39/2014 is hereby quashed and set aside.
3. The Member, Motor Accident Claims tribunal, Udgir is hereby directed to decide the MACP No.34/2014 the claim under 'Fault Liability' as expeditiously as possible, however, preferably within a period of SIX MONTHS from the date of this order.
4. The amount under 'No Fault liability' deposited before this Court shall be transferred to the Motor Accident Claims Tribunal, Udgir and disbursement of the said compensation amount would be subject to outcome of the main claim petition under Fault Liability.

5. First Appeal accordingly disposed of.
6. Pending civil application also stand disposed of.

(V.K. JADHAV, J.)

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