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

902 FIRST APPEAL NO. 3125 OF 2015

UNITED INDIA INSURANCE CO. LTD.
VERSUS
JYOTI DEEPAK BADGUJAR AND OTHERS

...

Advocate for Appellant : Mr. S. G. Chapalgaonkar.
Advocate for Respondent Nos.1, 4 & 5 : Mr. Madhav M. Bhokarikar.

…

AND

FIRST APPEAL NO. 3126 OF 2015

UNITED INDIA INSURANCE CO. LTD.
VERSUS
BABITA MADHUKAR BADGUJAR AND OTHERS

...

Advocate for Appellant : Mr. S. G. Chapalgaonkar.
Advocate for Respondent Nos.1 to 5 : Mr. Madhav M. Bhokarikar.

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CORAM : **V. K. JADHAV, J.**
DATE : 06th April, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the order passed below Exhibit – 6 in MACP No.353 of 2013 and MACP No.354 of 2013 by the learned Member of the Motor Accident Claims Tribunal, Jalgaon dated 17th August, 2015, original Respondent No.3 / Insurer has preferred these two separate appeals.

3 Brief facts giving rise to these two appeals are as follows:

i) On 9th August, 2013 at about 04:00 pm, deceased Deepak was riding the motorcycle and one Madhukar was the pillion rider. They were going to Jalgaon from Erandol. On way, one Tata Indica car bearing registration No.MH-02/JA-5945 gave dash to their motorcycle on its backside. In consequence of which, both of them had sustained the severe injuries. They were immediately shifted to the hospital where they succumbed to the injuries while under treatment. The Claimants / legal representatives of the deceased have approached the Tribunal by filing aforesaid two separate claim petitions i.e. MACP No.353 of 2013 and MACP No.354 of 2013 respectively for grant of compensation under the various heads and also filed an application Exhibit – 6 for fix compensation under no fault liability.

ii) So far as application Exhibit – 6 seeking fix compensation under no fault liability is concerned, the Respondent / owner has denied the involvement of the vehicle in the accident. However, the Respondent / driver of the said vehicle has admitted the accident and contended that the accident had taken place due to the fault on the part of deceased Deepak.

iii) The Appellant / Insurer has strongly resisted the application Exhibit – 6 by filing the Say. It has been contended that deceased Deepak had given statement while in hospital that one unknown truck gave dash to his motorcycle on its backside. However, thereafter, the involvement of the vehicle India car in the accident has been shown and in view of the same, the Respondent / Insurance Company is not liable to pay the compensation.

iv) The learned Member of the Motor Accident Claims Tribunal, Jalgaon after hearing the parties, vide impugned order dated 17th August, 2015, allowed the said application and thereby directed Respondent Nos.1 and 2 and the present Appellant jointly and severally to pay an amount of Rs.50,000/- to the Claimants. Hence, these two separate appeals.

4 The learned counsel for the Appellant / Insurer submits that after the accident deceased Deepak was shifted to the hospital where his statement-cum-dying declaration came to be recorded by the police. Deceased Deepak had stated in his statement-cum-dying declaration that one truck gave dash to his motorcycle on its backside and thus, the accident has taken place. On the same day, however, his supplementary statement below the statement-cum-dying declaration shown to have been recorded wherein deceased Deepak had stated that he was not knowing as to which vehicle had given dash to his motorcycle on its backside. The learned counsel submits that the said supplementary statement recorded below the statement-cum-dying declaration, does not bear the signature of deceased Deepak. The learned counsel submits that false involvement of vehicle Indica car in the accident has been shown afterthought and with sole purpose of getting the compensation. The learned Member of the Tribunal

however, has not considered the same and allowed the said application Exhibit – 6. The learned counsel submits that the main claim petitions for fault liability are ready for hearing and instead of allowing the Claimants to withdraw this amount by disposing of the present appeals, this amount may be transmitted to the Tribunal with a direction to decide the main claim petitions under fault liability expeditiously.

5 The learned counsel for the Respondents / Claimants submits that though the Respondent / owner has not admitted the accident, however, Respondent / driver who was admittedly driving the Indica car at the time of accident, has filed his Say / written statement before the Tribunal wherein he has admitted the happening of the accident. According to Respondent No.2 / driver, the accident had taken place due to the fault on the part of deceased Deepak. The learned counsel submits that the concerned P.S. has registered the crime, carried out the spot Panchanama and after due investigation, involvement of vehicle Indica car in the accident was revealed. Thus, the learned Member of the Tribunal has rightly allowed the application Exhibit – 6. No interference is required.

6 On perusal of the statement-cum-dying declaration dated

10th August, 2013 of deceased Deepak, it appears that deceased Deepak had stated that one truck gave dash to his motorcycle on its backside. Accident had taken place on 8th August, 2013 and he was immediately shifted to the hospital where his statement-cum-dying declaration came to be recorded by the police. It further appears from his statement-cum-dying declaration that on the same day, below his statement-cum-dying declaration, the concerned Investigating Officer has recorded his supplementary statement wherein deceased Deepak had stated that he cannot tell specifically as to which type of vehicle had given dash to his motorcycle on its backside. The said supplementary statement of deceased Deepak recorded by the Investigating Officer, cannot be questioned at this interim stage. Furthermore, the said Investigating Officer has carried further investigation and accordingly registered the crime against the Respondent / driver of Indica car. Respondent / driver of Indica car has filed his Say / written statement before the Tribunal wherein he has stated that the accident had taken place due to the fault on the part of deceased Deepak. It has been contended by him that he was driving his Indica car in slow speed. However, the rider of the motorcycle i.e. deceased Deepak has suddenly stopped his motorcycle and therefore, his Indica car dashed against the backside of the motorcycle. In view of this, I do not find any fault in the impugned order passed by the Tribunal. Deceased Deepak and his father-in-law Madhukar both died in the accident. So far as deceased Deepak is concerned, his widowed wife and two minor children and aged parents approached the Tribunal for grant of compensation under the various heads. Similarly, the wife, son and daughters of deceased Madhukar approached the Tribunal for grant of compensation under the various heads. The main claim under fault liability may take its own time for disposal. However, the very purpose of grant of fix compensation under no fault liability would be defeated if the amount is transmitted to the Tribunal with a direction to expedite the hearing of the main claim petitions on fault liability. In view of this, I do no find any substance in these two appeals. It is clarified that the observations made in this order are *prima-facie* in nature and the Tribunal shall not be influenced by the observations made in this order while deciding the main claim petitions on fault liability. Hence, the following order:

O R D E R

I. First Appeal No.3125 of 2013 (United India Insurance Company Ltd. Vs. Jyoti Deepak Badgujar and others) and First Appeal No.3126 of 2013

(United India Insurance Company Ltd. Vs. Babita Madhukar Badgujar and others), are hereby dismissed.

II. The Claimants are permitted to withdraw the amount, if deposited before this Court.

III. Both the appeals are accordingly disposed of.

IV. Pending civil applications stand disposed of.

[V. K. JADHAV, J.]

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