

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

FIRST APPEAL NO. 48 OF 2017

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD
THROUGH ITS BRANCH MANAGER THROUGH ITS
AUTHORIZED SIGNATORY

VERSUS

BEENABAI HIRAMAN OVAL AND OTHERS

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Advocate for Appellant : Mr Chapalgaonkar S.G.

Advocate for Respondents 1-3 : Mr M D Shinde

Advocate for Respondent 5 : Mr R K Ashtekar

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CORAM : V.K. JADHAV, J.

Dated: June 07, 2017

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PER COURT :-

1. Heard finally with consent at admission stage.
2. By way of this appeal, the original respondent-insurer has challenged the 'No Fault Liability' Award passed by the Member, Motor Accident Claims Tribunal, Latur in MACP No.118/2015.
3. Learned counsel for the appellant-insurer submits that, though the accident had taken place on 15.3.2011, the complaint came to be lodged by the son of the deceased on 21.3.2011 wherein, registration number of

the vehicle involved in the accident came to be mentioned as MH-12/BD-5674. However, after investigation, involvement of the vehicle auto-rickshaw bearing registration No.MH-24/E-8165 came to be shown and charge sheet was filed against the driver of the said auto rickshaw. Learned counsel submits that, said driver of the auto rickshaw bearing registration No.MH-24/E-8165 was tried before the criminal court and after securing his acquittal, the claim petition was filed for grant of compensation in the year 2015. Learned counsel submits that, Tribunal has not considered the same and awarded the compensation under no fault liability.

4. Learned counsel for respondents-claimants submits that, though son of the deceased lodged the complaint on 21.3.2011, he was not an eye witness to the incident. The involvement of the vehicle auto rickshaw bearing registration No.MH-24/E-8165 in the accident revealed during the course of the investigation and accordingly charge sheet came to be filed against

the driver of the said auto rickshaw. Though, said driver came to be acquitted in criminal trial, the involvement of the said vehicle in the accident has been revealed during the course of the investigation. The learned Member of the Tribunal has, therefore, rightly awarded the compensation under 'no fault liability'. No interference is required.

5. I have also heard the learned counsel for respondent-owner.

6. The accident had taken place on 15.3.2011, however, son of the deceased lodged the complaint on 21.3.2011. He was not an eye witness to the accident. It further appears that, during the course of the investigation, involvement of the vehicle auto rickshaw bearing registration no.MH-24/E-8165 revealed and as such, charge sheet was filed against the driver of the said vehicle. The learned Member of the Tribunal has also observed that the respondent-owner has not challenged the averments made in the petition. Though,

the appellant-insurer has raised the defence of collusion between the claimants and respondent owner, the same can be dealt with during the full-fledge trial of the claim petition under Fault Liability. I do not find any fault in the order passed by the Tribunal below exh.5 in MACP No.118/2015. There is no substance in the appeal. Hence, following order.

O R D E R

1. Appeal is hereby dismissed.
2. All points kept open in the Main Claim Petition under 'Fault Liability.'
3. The respondents-claimants are permitted to withdraw the amount deposited before this Court by the appellant-insurer alongwith accrued interest thereon.
4. First appeal accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

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aaa/-

aaa/-