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

**FIRST APPEAL NO. 445 OF 2016
WITH
MISC.CIVIL APPLICATION NO. 407 OF 2017
WITH
CIVIL APPLICATION (F) NO. 998 OF 2017**

Gopal s/o Keshaorao Gajbhiye,
aged Major, R/o Toli Maidan,
Katol, Dist. Nagpur ..APPELLANT

VERSUS

1. Keshaorao s/o Janiramji Bhalavi,
aged 67 years, Occ: Nil,

2. Vachalabai w/o Keshaorao Bhalavi,
aged 62 years, Occ: Household,

Both r/o. Jamgaon, Tah.Narkhed,
Dist. Nagpur.

3. The Divisional Manager,
Oriental Insurance Co. Ltd.,
A.D. Complex, Mount Road,
Sadar, Nagpur. ..RESPONDENTS

Mr Asghar Hussain, Advocate for appellant;
Mr P.S. Mirache, Advocate for respondent Nos. 1 and 2;

CORAM : N.W. SAMBRE, J.

DATE : 18th APRIL, 2017

ORAL ORDER :

For the reasons disclosed in the application being Misc. Civil Application for restoration of First Appeal No. 445 of 2016 which was dismissed on 5th April, 2017 for want of prosecution, same stands allowed in terms of prayer clause mentioned therein.

2. Heard respective Counsel. None appears for respondent No. 3 though served.

3. The judgment dated 22nd February, 2013 delivered by the Motor Accident Claims Tribunal, Nagpur under Section 163 of Motor Vehicles Act is questioned by the vehicle owner, as the liability to pay compensation of Rs.3,10,500/- along with interest is saddled on the appellant-respondent No.1 to the claim petition.

4. Learned Counsel for the appellant-vehicle owner made two fold submissions; (a) According to him, he has moved application under Order XLI Rule 27 of the Code of Civil Procedure seeking permission of this Court to produce on record the copy of insurance policy thereby demonstrating that the vehicle owner in question was having

comprehensive insurance with the original respondent No.2 i.e., present respondent No.3 and (b) the insurance policy speaks of comprehensive insurance and vehicle in question appears to be insured.

5. With the backdrop of submissions made, the issue, which is required to be dealt with, in my opinion, is, whether the case for remand is made out before this Court.

6. The deceased has died in the accident on 7th November, 2005 while driving auto-rickshaw. The offence being Crime No. 98 of 2005 for the offence punishable under Sections 279, 304-A of the Indian Penal Code came to be registered.

7. In the aforesaid back drop, it was claimed that the income of deceased was about Rs.3000/- per month and the age of deceased was of 25 years, compensation was claimed Rs.4,62,000/-.

8. Present appellant remained absent in the

claim petition. However, the insurance company vide written statement at Exhibit-21 denied the claim on the ground that though policy was valid for the period 31st March, 2005 to 30th March, 2006, the claim is denied as the driver of auto rickshaw cannot be covered under the insurance policy.

9. The tribunal then discussed the entire evidence and noted that insurance policy is not filed by the petitioner to prove that risk of driver is covered and insurance company has received premium. The burden, as such, was shifted to the petitioner to prove that risk of the driver was covered and as such, proceeded to award compensation by negating the same, to be recovered from vehicle owner.

10. As Civil Application No. 998 of 2017 moved under Order XLI Rule 27 of the Code of Civil Procedure, permission is sought to place on record additional evidence i.e. copy of insurance policy which is already produced along with memo of appeal

being annexure-II. In my opinion, the said application needs to be allowed in the interest of justice, as it was bounden duty of the insurance company to produce the same on record before the tribunal.

11. As such, a case for remand, in the aforesaid backdrop is made out. The appeal, as such, is partly allowed.

12. The judgment delivered by the Motor Accident Claims Tribunal, Nagpur in Motor Accident Claim Petition No. 29 of 2006 on 22nd February, 2013 is hereby quashed and set aside. The claim petition stood restored to the file of learned tribunal before whom, the parties hereto agree that they shall appear on 5th May, 2017.

13. The tribunal shall issue notice to the respondent-insurance company and shall decide the claim, if required by recording the evidence on the issue of insurance policy. The claim be decided within a period of six months from today.

14. The amount deposited by the appellant in this Court be remitted to the tribunal, who shall deal with the same after deciding the claim petition on merits.

15. The appeal stands disposed of in above terms.

(N.W. SAMBRE, J.)

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