**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.800 OF 2016**
**WITH**
**CIVIL APPLICATION NO.1901 OF 2016**
**IN**
**FIRST APPEAL NO.800 OF 2016**

National Insurance Co. Ltd. …Appellant/Applicant
Versus
Bhimaji Shahji Kurhade and Anr. ...Respondents

**WITH**
**FIRST APPEAL NO.801 OF 2016**
**WITH**
**CIVIL APPLICATION NO.1902 OF 2016**
**IN**
**FIRST APPEAL NO.801 OF 2016**

National Insurance Co. Ltd. …Appellant/Applicant
Versus
Kumari Mansi Manohar Dhome and Anr. ...Respondents

**WITH**
**FIRST APPEAL NO.804 OF 2016**
**WITH**
**CIVIL APPLICATION NO.1905 OF 2016**
**IN**
**FIRST APPEAL NO.804 OF 2016**

National Insurance Co. Ltd. …Appellant/Applicant
Versus
Sangeeta Bhimaji Khurade and Anr. ...Respondents

…..

Mr. Rahul Mehta I/b. M/s. KMC Legal Ventures for the Appellant/Applicant.
Mr. Sunil R. More for the Respondent No.1 in all the appeals and applications.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**
**DATED: 18th JUNE, 2019.**

**ORAL JUDGMENT:-**

With consent, heard finally at the stage of admission.

2. The Appellants herein have challenged the judgment and award dated 27th August, 2015 in M.A.C.P. Nos.818 of 2011, 819 of 2011 and 820 of 2011 made by the learned Member, M.A.C.T, Thane,

3. By the impugned judgment and award the Claims Tribunal has allowed the Petitions filed under Section 166 of the Motor Vehicles Act, 1988 and awarded compensation of Rs.7,50,000/-, 2,75,000/- and 3,30,000/- respectively with interest @8% p.a. from the date of petitions till final realization.

4. The Respondents No.1 in all the appeals, who are the original claimants, were travelling in a car bearing MH-04-Y-9505. It is the case of the Claimants that when they had reached near Forest Chauki, Khubi village, a car bearing No.MH-16-AJ-1117 dashed against their vehicle and as a result they sustained multiple grievous injuries. The case of the claimants is that the offending vehicle was owned and driven by the Respondent No.2 and was insured with the Appellant-

Insurance Company. The Respondent No.1 had claimed that the accident was caused solely due to rash and negligent driving by the Respondent No.2. Hence they filed Petitions under Section 166 of the Motor Vehicles Act, 1988.

5. The Respondent No.2 did not dispute involvement of the vehicle in the accident but denied that the accident was caused due to his rash and negligent driving.

6. The Claims Tribunal after considering the evidence on record has recorded the finding that the accident was caused due to the rash and negligent driving of the driver of the offending vehicle. The Tribunal has awarded compensation of Rs.7,50,000/-to Bhimaji-Respondent No.1 in First Appeal No.800 of 2016, Rs.3,30,000/- to Mansi Dhome- Respondent No.1 in First Appeal No.801 of 2016 and Rs.2,75,000/- to Mrs. Sangeeta-Respondent No.1 in First Appeal No.804 of 2016. The compensation includes the amount reimbursed under the Mediclaim Policy. The challenge to the award is restricted only to this amount, which has been reimbursed under Mediclaim Policy. The learned counsel for the Appellant contends that the Appellant-Insurance Company cannot be directed to pay the said amount, which has already been reimbursed under the Mediclaim

Policy.

7. It may be mentioned that the issue is squarely covered by the judgment dated 19th March, 2019 in First Appeal No.1620 of 2012 wherein the Single Judge of this Court after considering the principles laid down by the Apex Court in ***Helen C. Rebello Vs. MSRTC, AIR 1998 SC 3191*** has held that :-

> *"28. In the light of aforesaid enunciation as regards the statutory liability of the insurer, the nature of general contract of medical insurance needs to be noted. The medical insurance covers a variety of ailments and medical expenses therefor, which are not otherwise specifically excluded. Often there is a upper limit. The duration is also stipulated by the terms of the contract. In this backdrop, the matter can be looked at from another angle. If the claimant exhausts the upper limit or substantial part of the insured amount, for meeting the expenses of treatment, for the injury which is suffered in an accident, the claimant would not be entitled to the benefit of the medical insurance, if the occasion again arises on account of certain other ailments unconnected with the accident. If the policy is in the nature of Family Floater Plan and the limit is exhausted for meeting the expenses in connection with an injury suffered in an accident, by one member, the other members of the family cannot have the benefit of the medical insurance.*
>
> *29. In the backdrop of these variables, the nature of the proceedings under the Act, becomes significant. A claim petition for compensation in regard to a motor accident filed by the injured before Tribunal constituted under Section 165 of the Act, is neither a suit nor an adversarial lis in the traditional sense. Though the tribunal*

*adjudicates on a claim and determines the compensation, it does not do so as in an adversarial litigation. (United India Insurance Co. Ltd. Vs. Shila Datta & Ors.). This being the nature of the proceedings before the Tribunal, even in respect of the parties before it, in my view, the benefits emanating from an independent and unconnected contract of insurance cannot be considered by the Tribunal, as it besets with variables rooted in cotract.*

*30. From this stand point, in the context of the distinction between the contractual liability under the contract of insurance (medical) and the statutory liability under the Act, the aforesaid proposition, not to deduct the amount of reimbursement received, under a mediclaim policy, appears to be in consonance with the principle of beneficial interpretation and advances the object of the Act. Hence, I am not persuaded to agree with the submission on behalf of the appellant that the said amount of Rs.1,20,000/ought to have been deducted."*

8. The issue raised by the Appellant-Insurance Company is squarely covered by the said judgment. The Tribunal has not committed any error in not deducting the amount reimbursed under Mediclaim Policy.

9. Under the circumstances, there is no merit in the appeals. The appeals are accordingly dismissed.

10. In view of dismissal of the appeals, the civil applications do not survive and hence stand disposed of.

11. The statutory deposits may be transferred to the Tribunal, if not already transferred

**(SMT. ANUJA PRABHUDESSAI, J.)**

Megha Parab Digitally signed by Megha Parab Date: 2019.07.19 12:18:27 +0530