IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2478 OF 2017

The United India Insurance Co. Ltd.,
Branch Office, Beed,
Through its Divisional Manager,
Aurangabad ... **Appellant**
(Orig. Respondent)

Versus

1. Kusum w/o Ashruba Mule
Age 30 years, Occu: Household,

2. Vishal s/o Ashruba Mule
Age 12 years, Minor

3. Tushar Ashruba Mule
Age 10 years, Minor

R-2 & 3 are minors and
Under Guardianship of their
Real mother Kusum R-1,

All R/o Bhopa, Tq. Majalgaon,
Dist. Beed ... **Respondents**
(Orig.Claimants)

....

Mr. A. A. Lomte, Advocate h/f Mr. A. G. Kanade, Advocate for appellant
Mr. S. J. Salunke, Advocate for respondents

....

CORAM : R. G. AVACHAT, J.

DATED : 17th NOVEMBER, 2021

PER COURT :-

. This is Insurance Company's appeal, taking exception to the judgment and award dated 26.02.2010, passed by the Member, Motor Accident Claims Tribunal, Majalgaon, in Motor Accident Claim Petition No.102 of 2005 (Old MACP No.75 of 2005), granting compensation of Rs.3,91,000/- with interest @ 8% per annum on account of death occurred in vehicular accident.

2. The challenge is mainly on the ground of maintainability of the claim petition. The claim petition was filed by the widow and two minor children of the deceased Ashruba. The deceased was the owner of the auto-rickshaw bearing registration No. MH-20-U-4157. When it met with the accident, it was the deceased who was driving the same. The auto-rickshaw turtled and as a result of injuries suffered thereby, Ashruba succumbed thereto. As such, no other vehicle was involved in the accident.

3. Learned Advocate for the respondents – claimants took me through the impugned judgment and particularly para 16 thereof. It was submitted that the auto-rickshaw involved in the

accident had insurance cover. The policy of the insurance was comprehensive in nature. Learned Advocate supports the impugned judgment and award.

4. The claim was filed under Section 166 of the Motor Vehicles Act, 1988. For grant of compensation under Section 166 of the Motor Vehicles Act, negligence on the part of the driver of the offending vehicle is required to be proved. Liability of the Insurance Company is in the nature of indemnification to the owner of the vehicle involved in the accident. Here, the owner-cum-driver of the auto-rickshaw himself met with the accident and died therein. The petition was filed against the Insurance Company alone. On investigation, chargesheet was filed against the deceased himself. The deceased was not third party. So far as regards claim for compensation under Section 166 of the Motor Vehicles Act is concerned, there is prima-facie nothing to indicate the policy of insurance to have had covered the risk of the owner-cum-driver of the auto-rickshaw. Even if it is assumed that, such risk has been covered, the accident took place due to fault of the deceased himself.

5. In the facts and circumstances, the Tribunal ought not to have allowed the claim petition. Interference therewith is therefore

warranted. In the result, the appeal succeeds. Hence, following order:

<u>O R D E R</u>

(i) The appeal is allowed.

(ii) The impugned award dated 26.02.2010, passed by the Member, Motor Accident Claims Tribunal, Majalgaon in Motor Accident Claim Petition No.102 of 2005 (Old MACP No.75 of 2005) is hereby set aside. The claim petition is dismissed.

(iii) The amount of compensation in deposit with this Court or the Tribunal, be paid back to the appellant – Insurance Company with interest accrued thereon.

(iv) Civil application No.10619 of 2021 is disposed of.

[R. G. AVACHAT, J.]

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