

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

959 FIRST APPEAL NO.1811 OF 2018
WITH CA/1142/2019 IN FA/1811/2018

THE NEW INDIA ASSURANCE CO. LTD.,
THR ITS IN-CHARGE, AURANGABAD

VERSUS

SHOBHABAI GANGADHAR TAYADE AND ORS

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Advocate for Appellant : Mr S.R. Bodade
Advocate for Respondent No.1 : Mr Navin S. Shah h/f Mr S.V. Natu

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 10th March, 2022

PER COURT :

1. With consent of both the sides, heard finally at admission stage.
2. Mr Navin Shah holding for Mr S.V. Natu, learned counsel for respondent No.1 submitted that the claim petition was filed before the M.A.C.T. Aurangabad by the claimants under section 163-A of the Motor Vehicles Act, 1988. On the basis of instructions received from the original claimants, the claimant/respondent No.1 intends to convert her claim under section 166 of the Motor Vehicles Act. He places his reliance on the citation in case of ***M/s New India Assurance Company Ltd. Vs. Smt. Ashabai W/o Kalyan Kothi*** reported in ***2008 (2) TN MAC 253 (Bom.)***. By placing the reliance on the said decision, Mr Navin Shah submitted that the Tribunal as well as the High Court is empowered to allow conversion of petition under section 163-A into claim petition under section 166 of the Motor Vehicles Act. He therefore, submitted that he would move such application for conversion of claim petition by making necessary application before the Tribunal. The claim may be restored on its original position by remanding the matter.

3. Mr Bodade, learned counsel for the appellant/insurance company opposed to exercise such discretion at appellate stage. By way of alternate submission, Mr Bodade, learned counsel for the appellant/insurance company submitted that if this Court comes to the conclusion to allow the prayer of the respondent/claimant to convert the claim under section 166 of the Motor Vehicles Act, the defences available to the insurance company also may be kept open so that insurance company would be in a position to raise its defences before the Tribunal after remanding the matter.

4. I have considered the submissions of Mr Navin Shah, learned counsel for respondent No.1/original claimant and Mr S.R. Bodade, learned counsel for the appellant/insurance company.

5. Perused the impugned Judgment and award passed in M.A.C.P. No. 685/2011 by the M.A.C.T. Aurangabad dated 05.02.2018.

6. On perusing the impugned Judgment, it is revealed that the claim petition was filed by the claimant by taking aid of section 163-A of the Motor Vehicles Act. The Tribunal seems to have partly allowed the claim and directed to the respondents including the appellant to pay the compensation of Rs. 1,26,000/- with interest @ 9% per annum from the date of filing of the claim petition till its realization.

7. Now, the original claimant wants to convert her claim into petition under section 166 of the Motor Vehicles Act with further prayer to remand the claim proceedings for fresh decision. The identical issue was decided by this Court in case of ***M/s New India Assurance Company Ltd. Vs. Smt. Ashabai W/o Kalyan Kothi*** (supra). This Court Bench at Aurangabad was pleased to

hold that the Tribunal/High Court is empowered to allow conversion of petition under section 163-A into claim under section 166 of the Motor Vehicles Act while exercising discretion of allowing conversion, conduct of claimant will be relevant.

8. The object of Motor Vehicles Act needs to be considered. It is a social beneficial legislation. It is for the claimant to choose under which provision, the petition is to be filed.

9. Having regard to the legal position made clear by this Court in case of ***M/s New India Assurance Company Ltd. Vs. Smt. Ashabai W/o Kalyan Kothi*** (supra), I do not see any difficulty to remand the claim petition to the Tribunal with certain directions so that application for conversion of claim petition also can be taken care of. Hence, I proceed to pass the following order :-

ORDER

- (I) The impugned Judgment and award passed in M.A.C.P. No. 685/2011 by the M.A.C.T., Aurangabad dated 05.02.2018 is hereby quashed and set aside.
- (II) The proceeding of M.A.C.P. No.685/2011 is restored to the file of M.A.C.T., Aurangabad.
- (III) On an application being made by the original claimant, the learned Member of the Tribunal will allow the claimant to carry out necessary amendments in the claim petition for converting claim petition into claim petition under section 166 of the Motor Vehicles Act, 1988.
- (IV) It will be open for the respondents/insurance company and others in the claim petition to file their written statements or to file supplementary written statements by adopting the earlier written statements which are also on record.

- (V) The claim petition would be decided as expeditiously as possible within a period of six months from the receipt of the writ of this Court along with record and proceedings.
- (VI) All the contentions of the parties including various contentions raised by the appellant/insurance company in the appeal are kept open.
- (VII) Record and proceedings be sent back to the M.A.C.T., Aurangabad forthwith with a copy of order passed by this Court for information and compliance to the M.A.C.T., Aurangabad.
- (VIII) The Tribunal may consider the point of interest from when it is to be awarded having regard to the request made by the claimant for remanding the claim.
- (IX) The amount if any, lying in this Court, the Registry to transfer the same to the M.A.C.T., Aurangabad forthwith.
- (X) The liberty is granted to the claimant to file an application for withdrawal of compensation before the M.A.C.T., Aurangabad.
- (XI) The appeal is disposed of in above terms with no order as to costs.
- (XII) Pending civil applications, if any, also stand disposed of.

(SHRIKANT D. KULKARNI, J.)

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