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

WRIT PETITION NO.570 OF 2021

**SARDARSINGH AMBARSINGH PATIL
VERSUS
AJINATH NAMDEO KABMLE AND OTHERS**

...
Mr P. P. Mandlik a/w Mr P. S. Mehta, Advocates for petitioner;
Mr S. G. Chapalgaonkar, Advocate for respondent No.3

CORAM : SMT. BHARATI DANGRE, J.

DATE : 22nd February, 2022

PER COURT:

1. Heard the learned Counsel for the claimant and the learned Counsel for respondent No.3 – Insurance Company. The respondent No.1 is the owner of the vehicle and respondent No.2 is the driver of the vehicle.

Thought the service to respondent No.1 is awaited, I heard the learned Counsel for the claimant and for the Insurance Company, who is contesting the petition.

2. On perusal of the proceedings, it can be seen that the petition is filed being aggrieved by rejection of the application of the claim seeking amending his claim petition and substituting the

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claim projected under Section 163-A of the Motor Vehicle Act, with the claim under Section 166 of the Motor Vehicle Act.

3. In the application, it is categorically stated that the claim petition was filed without being acquainted of the provisions to the effect that under Section 163-A, the medical bills and expenses that can be claimed, has a statutory limit. Since the claimant had incurred huge medical expenses and had produced original bills, he claimed compensation of Rs.5,00,000/-, which included the amount of hospitalization and medicines. However, at the stage, when the evidence affidavit was filed and before the cross-examination could begun, the mistake was realized and therefore, the application was moved to convert the claim from the claim under Section 163-A to 166 of the Motor Vehicle Act.

4. This application is rejected by the learned District Judge, Aurangabad under the impugned order and the sole reasoning of the learned Judge is on the account of the delay and the stage, at which such application has been moved. The learned Judge has recorded that, if the choice was available to the claimant, either to institute the proceedings under Section 163-A or 166 of the Motor Vehicle Act, and since he has chosen one remedy, he cannot now

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turn back and amend his claim by converting it to be the one under Section 166.

5. The learned Counsel for the Insurance Company fairly state that an amicable settlement is arrived between the claimant and Insurance Company and the claimant is ready to accept an amount awarded by the Insurance Company, subject to the fact that he need an amendment by bringing the claim under Section 166 of the Motor Vehicle Act. This fact is not denied by the learned Counsel for the claimant and since he is agreeable to the amount, which is being offered by the Insurance Company, I see no hesitancy in permitting the claimant to compromise, providing the claimant exercise his right with free consent and the compromise is not forced upon him by the Insurance Company.

6. The learned Judge, by ascertaining the aforesaid fact that the claimant's consent to the amount being offered by the Insurance Company, is just and fair compensation, shall permit the parties to compromise. However, for the aforesaid purpose, the claim will have to be entertained under Section 166 of the Motor Vehicle Act. Necessarily, the claim shall be permitted to be amended as

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the one instituted under Section 166, by giving up the claim under Section 163-A of the Motor Vehicle Act.

7. The impugned order is quashed and set aside. The application of the claimant is granted. The learned Judge shall permit the compromise between the claimant and the Insurance Company, if it is fair to the claimant.

Writ Petition is disposed of.

(SMT. BHARATI DANGRE, J.)

sjk