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

FIRST APPEAL NO. 929 OF 2018
WITH
CIVIL APPLICATION NO. 13261 of 2016 IN FA/929/2018

Reliance General Insurance Company,
Through its Manager
R/o Reliance General Insurance
Company, Adalat Road, Aurangabad .... Appellant.

Versus

1. Mankarnabai W/o Sundar Sangale,
Age: 34 years, Occu.: Household,
R/o Pardi (Savali),
Tq. Aundha (N), Dist. Hingoli.

2. Ku. Vaishnavi D/o Sundar Sangale,
Age: 9 years, Occu.: Nil,
Minor u/g of real mother
respondent no.1 as above.

3. Gyandeo S/o Nagoji Sangale,
Age: 67 years, Occu: Agri.,
R/o. Pardi (Savali),
Tq. Aundha (N), Dist. Hingoli.

4. Sau. Ulfabai W/o Gyandeo Sangale,
Age: 62 years, Occu.: Household,
R/o. Pardi (Savali),
Tq. Aundha (N), Dist. Hingoli.

5. Ramchandra S/o Maroti Rawale,
Age : Major, Occu.: Business,
R/o Asola, Tq. Aundha (N),
Dist. Hingoli. .... Respondents.

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Mr. Swapnil S. Patil, Advocate for the Appellant
Mr. Sachin Deshmukh, Advocate for Respondent Nos. 1 to 4

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CORAM : SHRIKANT D. KULKARNI, J.
DATE : 02nd FABRUARY, 2022

ORAL JUDGMENT :-

1. Heard finally at admission stage with the consent of learned counsel appearing for respective sides.

2. This appeal is directed against the impugned judgment and award passed in M.A.C.P. No. 71 of 2009 by the Member, M.A.C.T. at Basmath dated 24.11.2015.

3. Heard Mr. S.S. Patil, learned counsel for the appellant and Mr. Sachin Deshmukh, learned counsel for respondent nos. 1 to 4. None present for respondent no.5, when matter is called out.

4. Mr. Swapnil Patil, learned counsel for the appellant submitted that though the Reliance General Insurance Company has given the brief to its panel advocate, its panel advocate did not put his appearance before the Tribunal. He remained absent. The claim proceeded *ex-parte*. The claim petition came to be allowed in absence of respondent no. 2 / insurance company.

He submitted that the insurance company could not get an opportunity to raise the statutory defence available to the insurance company under the Motor Vehicles Act and Rules. He submitted that the appellant has deposited the entire decreetal amount with 10% interest as per the award. He submitted that in the interest of justice, it is necessary to remand the matter to the Tribunal for decision afresh on its own merits.

5. Per contra, Mr. Sachin Deshmukh, learned counsel for respondent nos. 1 to 4 / original claimants opposed to remand the matter to the Tribunal. He submitted that there is nothing on record to show that the panel advocate of the insurance company did not put his appearance and because of the fault of the panel advocate of the insurance company, the matter went *ex-parte*. He submitted that the plea taken by the appellant is without any foundation. He further submitted that the Tribunal has decided the claim on its own merits and accordingly awarded the compensation. If this Court comes to the conclusion to remand the matter to the Tribunal for fresh decision, the original claimants may be allowed to withdraw the amount of compensation as per the award passed by the Tribunal. Why the claimants should suffer because of lapses on the part of the insurance company. They have

fought for this litigation since the year 2009 and they could not get any fruits despite of the order in their favour.

6. Having regard tot he submissions made by the learned counsel for both the sides, I have gone through the impugned judgment and award passed by the Member, M.A.C.T. Basmath in M.A.C.P. No.71 of 2009 dated 24.11.2015.

7. On perusing the impugned judgment, it is noticed that respondent no.2 / Reliance General Insurance Co. Ltd. marked as *ex-parte*. It is evident from the record that the matter / claim has been decided *ex-parte.* It would not be proper to make any comment about the panel advocate who was looking after the claim and whom the claim was assigned to look after by the appellant. The fact remains that the claim was proceeded *ex-parte.* The appellant / insurance company could not get an opportunity of being heard. The insurance company could not get an opportunity to raise the statutory defences available under the Motor Vehicles Act and Rules. By considering all these aspects, it is necessary to remand the claim to the Tribunal for a fresh decision on its own merits by permitting the appellant / Reliance General Insurance Co. Ltd. to participate in the claim and raise its statutory

defences as permissible in law by filing its written statement. That exercise would meet the ends of justice.

8. It is revealed during the course of argument that the appellant / insurance company has deposited the entire decreetal amount with interest. As such, the interest of the claimants is protected. It is true that the claimants could not get any amount despite of decision in their favour. They are fighting this claim petition since the year 2009. The accident took place on 28.01.2009. By considering all these aspects and in order to extend monetary help to the original claimants, it is necessary to issue some directions regarding partial payment. Further, it is necessary to fix the time schedule so that the claim petition can be disposed of as expeditiously as possible.

9. In view of the above, I proceed to pass the following order.

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

(i) The appeal is hereby allowed.

(ii) The impugned judgment and award passed in M.A.C.P. No. 71 OF 2009 by the Member, M.A.C.T. Basmath dated 24.11.2015 is hereby quashed and set aside.

(iii) The proceedings of M.A.C.P. No. 71 OF 2009 is restored to the file of District Judge-1 / Member, M.A.C.T. Basmath and remitted back for decision afresh.

(iv) Both the parties shall appear before the District Judge-1 / Member, M.A.C.T., Basmath on 24.02.2022.

(v) The appellant / Reliance General Insurance Co. Ltd. shall file its written statement by raising all the statutory defences available under the Motor Vehicles Act and Rules within three (03) weeks from its appearance.

(vi) The Tribunal shall decide the claim on its own merits within a span of three (03) months from the date of completion of pleadings. The Tribunal shall extend an opportunity to both the sides to lead their oral and documentary evidence in support of their case.

(vii) The appellant shall pay the cost of this appeal quantified at Rs. 15,000/- to the original claimants and bear its own.

(viii) The appellant / insurance company shall deposit the amount of costs with the Tribunal, within four (04) weeks from today.

(ix) The original claimants are permitted to withdraw Rs.2,00,000/- out of the decreetal amount on furnishing usual undertaking to the satisfaction of the Tribunal.

(x) R & P be sent back to the concerned Tribunal.

(xi) The Registry to transfer the amount lying with the Registry to the M.A.C.T. Basmath forthwith.

(xii) The first appeal is accordingly disposed of

(xiii) In view of disposal of the appeal, civil application No.13261 of 2016 for stay also stands disposed of.

(xiv) The Registrar (Judicial) is requested to send the copy of this judgment to the concerned Tribunal for information and necessary compliance.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane