

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

**906 FIRST APPEAL (STAMP) NO.13980 OF 2018
WITH
CIVIL APPLICATION NO.8149 OF 2018
WITH
CIVIL APPLICATION NO.3787 OF 2019**

1. Reliance General Insurance Co. Ltd.,
Through its Divisional Manager,
Son Plaza, 2nd Floor, Subhash Chowk,
Murarji Peth, Dist. Solapur.
2. Reliance General Insurance Co. Ltd.
Through its Divisional Manager,
Yogesh s/o Diliprao Dhase
Age : 32 years, Occu.: Service,
R/o.: C-9, 10, ABC Complex,
2nd floor, Near Man-mandir,
Adalat Road, Aurangabad.

... APPELLANTS
(Orig. Res. no.2 & 3)

VERSUS

1. Minabai w/o Dhondiba Kendre,
Age ; 40 years, Occu.: Household,
2. Shivshankar s/o Dhondiba Kendre,
Age ; 20 years, Occu.: Education,
3. Ganesh s/o Dhondiba Kendre,
Age : 18 years, Occu.: Education
4. Sharjabai w/o Nivratti Kendre,
Age : 60 years, Occu.: Household,

All R/o.: Sheilali, Kandhar,
Tq. Kandhar, District : Nanded

... Claimants

5. Dnyaneshwar s/o Bapurao Gandawalwad,
Age : Major, Occu.: Business

(Owner of auto rickshaw MH-26/AC-4166)

R/o.: Pethwadaj Tq. Kandhar,

District : Nanded

... RESPONDENTS
(Res.nos.1 to 4 orig.
claimants & res.no.5
Orig. respondent no.1)

...

Advocate for Appellants : Mr. A. S. Usmanpurkar

Advocate for Respondent Nos.1 to 4 : Mr. Quadiri Taher Ali

....

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 24/11/2022.

ORAL JUDGMENT :

1. Heard rival submissions.
2. The Civil applications for service to respondent No.5 by paper publication and for the delay condonation are pending. However, since both the counsel are requesting for remand of the matter for deciding the application Exh.5 afresh, the notice to respondent No.5 is dispensed with and the delay of only five days stands condoned. Accordingly Civil Applications No.8149 of 2018 and Civil Application No.3787 of 2019 are disposed of and appeal be registered.
3. The appellant insurance company has challenged the order dated 02/01/2018 passed by the learned Tribunal Kandhar below Exh-5 i.e. the application under Section 140 of M.V. Act, 1988 in MACP No. 55 of 2016. Though the matter is pending for serving notice to respondent No.5 i.e. the owner of alleged offending

Autorikshaw, but the rival counsel submit that this court in other similar appeal vide order dated 26/09/2022 has remanded the matter back to the concerned MACT for deciding the application Exh.-5 afresh alongwith the main claim petition under Section 166 of M. V. Act.

4. It appears that there is dispute between contesting parties as to whether the insurance company of the offending rickshaw covers the liability of paying compensation. It appears that for deciding such issue the evidence will be required and that can be done at the final hearing of main claim petition. In view of the same and relying on the submissions of rival counsel following order is passed :

ORDER

1. The appeal is hereby allowed and impugned order below Exh.5 dated 02/01/2018 passed by the learned Tribunal in MACP No.55 of 2016 is hereby set aside and the learned Tribunal is directed to decide the application Exh-5 afresh alongwith main claim petition under Section 166 of M. V. Act on its own merits.
2. The amount of Rs.50,000/-deposited by the appellant insurance insurance company be transmitted to the concerned MACT, Kandhar and the withdrawal of said amount will be subject to final out come of the MACP No. 55 of 2016.

3. The learned MACT, Kandhar is directed to dispose of the main claim petition alongwith Exh.-5 as early as possible.
4. The R & P be sent back forthwith.
5. Pending civil application, if any, stands disposed of.
6. The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)