IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3823 of 2019
WITH
CIVIL APPLICATION NO.3645 OF 2022 IN FA/3823/2019
WITH
CIVIL APPLICATION NO.14800 OF 2019 IN FA/3823/2019

THE NATIONAL INSURANCE CO. LTD., THROUGH ITS
AUTHORIZED SIGNATORY, AURANGABAD
VERSUS
MIRABAI RAGHUNATH JADHAV AND OTHERS

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Mr. A.B. Kadethankar, Advocate for the Appellant
Mr. V.H. Solanke, Advocate for Respondent Nos.1 to 7
Mr. A.V. Lavte, Advocate for Respondent No.8
Respondent No.9 - absent

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CORAM : SHRIKANT D. KULKARNI, J.

DATE : 15th MARCH, 2022

FINAL ORDER:-

1. Mr. Ajit Kadethankar, learned counsel for the appellant, Mr. V.H. Sonalnke, learned counsel for respondent nos. 1 to 7 and Mr. A.V. Lavte, learned counsel for respondent no.8 are present. Respondent no.9 though duly served, remained absent when matter is called out.

2. With the consent of both the sides, the appeal is taken up for final disposal at admission stage.

3. This appeal is directed against the impugned order passed below Exhibit 5 in M.A.C.P. No. 11 of 2018 by the Member, Motor Accident Claims Tribunal, Majalgaon, whereby the learned Member of the M.A.C.T. was pleased to allow the application filed by the claimants under Section 140 of the Motor Vehicles Act, 1988.

4. Mr. Kadethankar, learned counsel for the appellant vehemently submitted that the vehicle has been planted subsequently in the accident. At the time of the accident, some other vehicle was involved. The driver of the vehicle is different. While lodging the F.I.R., some other number of the vehicle was mentioned as well as the owner and driver of the vehicle. Mr. Kadethankar submitted that it is a false implication of the vehicle, which was insured with the appellant in order to get the compensation amount.

5. Mr. Kadethankar, learned counsel for the appellant invited my attention to the copy of the complaint extract in Crime No. 0255 of 2017 registered with Dindrud Police Station dated 25.11.2017, copy of supplementary statement of Shivaji Jivan Jadhav before the Investigating Officer and the copy of the second

supplementary statement of the same person before the Investigating Officer of Dindrud Police Station. By placing reliance on those statements and copy of complaint extract, Mr. Kadethankar vehemently submitted that it is a classic example of false implication of the vehicle. He submitted that the Tribunal has not considered this aspect and allowed the application under Section 140 of the Motor Vehicle Act, 1988. The impugned order does not sustain in the eye of law. It is liable to be set aside.

6. *Per contra*, Mr. V.H. Solanke, learned counsel for the respondents / original claimants supported the impugned order passed by the Member, M.A.C.T., Majalgaon. He submitted that there is absolutely no *iota* of evidence to support the contention and the defence raised by the insurance company. The defence would be considered at the time of final decision of the claim. As such, the defence tried to be put forth on behalf of the insurance company cannot be entertained in absence of any foundation of evidence. He, therefore, submits that the impugned order passed by the Member, M.A.C.T. needs to be upheld.

7. Perused the impugned order passed below Exhibit 5 in M.A.C.P. No. 11 of 2018 by the Member, M.A.C.T., Majalgaon.

The learned Member, M.A.C.T., Majalgaon after perusing the documents on record pertaining to the vehicle and the papers related to insurance policy arrived at conclusion that the applicants/ claimants have *prima facie* proved the involvement of the vehicle. Accordingly, the Member, M.A.C.T., Majalgaon was pleased to allow the application moved by the claimants under Section 140 of the Motor Vehicle Act and awarded Rs.50,000/- under no fault liability. The view taken by the learned Member, M.A.C.T., Majalgaon cannot be said to be faulty. The learned Member has considered the documents, which are placed on record and on that basis, formed *prima facie* opinion about the involvement of the vehicle on the basis of F.I.R., spot panchanama and other material. I do not find any defect in the impugned order passed by the Tribunal. The defence raised by the appellant / insurance company would be certainly considered at the time of final disposal of the claim. In absence of any evidence, it is difficult to accept the defence raised on behalf of the insurance company.

8. Having regard to the above reasons and discussion, I do not find any merit in the appeal.

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

(i) The appeal stands dismissed.

(ii) The N.F.L. amount of Rs.50,000/- lying in this Court be paid to the claimants.

(iii) No order as to costs.

(iv) In view of disposal of the first appeal, civil application nos 14800 of 2019 and 3645 of 2022 also stand disposed of.

(v) The observations made by this Court are *prima* facie to the extent of deciding this first appeal. The Member, M.A.C.T. shall not get influenced by those observations made by this Court.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane