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

**FIRST APPEAL NO. 736 OF 2022
(CIVIL APPLICATION NO. 10280 OF 2022)**

New India Assurance Company Ltd.,
A company registered under
the Companies Act, and subsidiary of
General Insurance Co. India
Having one of its divisional office at
Adalat Road, Aurangabad through
its Authorized signatory.

. **APPELLANT**
(Ori. R.No.2)

VERSUS

1. Balasaheb Asaram Khengat
Age : 44 years, Occ : Business & Agriculture,
R/o Baburdi Bend,
Tq. & District Ahmednagar

2. The Managing Director,
Ashok Sahakari Sakhar Karkhana Ltd.,
Ashoknagar, Tq. Shrirampur,
Dist. Aurangabad.

. **RESPONDENTS**
(R.No.1 – orig. claimant
& R.No.2 – orig. R.no.1)

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Advocate for Appellant : Mr.A.B. Kadethankar
Advocate for respondent no.1 : Mr. D.S. Manorkar

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CORAM : S.G.DIGE, J.

RESERVED ON : 18/07/2022
PRONOUNCED ON : 29/07/2022

JUDGMENT :

Being aggrieved by the judgment and award delivered by the Member, Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim Petition No.30 of 2017, the appellant (original respondent no.2) – insurer has preferred this appeal.

2. Brief facts of the case are as under :-

(a) The claimant (respondent no.1) on 16.04.2016 while driving a bike bearing registration No. MH-16-BF-8922 met with an accident with Bolero Jeep bearing registration No.MH-17-AZ-7217 on Ahmednagar-Daud road at around 8.30 p.m.

(b) The claim petition was filed under section 166 of the Motor Vehicles Act, 1988 (For short, "M.V. Act") against the owner and insurer of the Jeep. Respondent no.2 is the owner of Jeep whereas the appellant is insurer.

(c) The appellant – insurer resisted the claim on facts and law. The specific plea was raised that the Jeep driver was not holding any motor driving licence on the date of accident, and that, due to breach of fundamental term of the policy, the insurer is not under any obligation to indemnify the owner.

(d) The learned Tribunal partly allowed the claim and awarded Rs.8,50,000/- directing the appellant to satisfy the award jointly or severally with the owner, so also the pay and recover directions are issued. Against the said judgment and award, this appeal.

3. It is the contention of the learned counsel for the appellant that the driver was absolutely not holding the licence, which is a breach of fundamental term of policy. Hence, the insurer is under no obligation to indemnify the owner and/or pay the compensation first to the claimant and then recover it from the owner. The learned Tribunal ought to have clearly exonerated the appellant without passing any directions of pay first and recover later. There is

absolutely no evidence about job and income of the claimant. Under these circumstances, the notional income @ Rs.6000/- per month, as held by the learned Tribunal, is on higher side, which is liable to be reduced to fix just and proper quantum. The findings of the learned Tribunal on the point of negligence are not proper. The claimant ought to be apportion the liability. Respondent no.1 (claimant) has not proved functional disability to make the certified permanent disability proportionate to the loss of earning capacity. Hence requested to allow the appeal.

4. The learned counsel for respondent no.1 (claimant) submitted that after considering the evidence on record, the learned Tribunal has passed the order. The learned Tribunal has considered all the points raised by the appellant before the learned Tribunal. The appellant has not produced any evidence in support of their contentions before the learned Tribunal. The order passed by the learned Tribunal is legal and valid.

5. I have heard all the learned counsel. Perused the judgment and award passed by the learned Tribunal.

6. The appellant's main contention is in respect of the directions given by the learned Tribunal to pay first and recover later. It is the contention of the learned counsel for the appellant that the driver of the Jeep was not holding any licence, it is in breach of fundamental term of policy. Hence the appellant is not liable to indemnify the owner or pay compensation first to the claimant and recover it later. The learned Tribunal, while answering this issue, has relied on the decision given by the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd., Vs. Vidyadhar Mahariwala and others*** reported in (***2008) 12 SCC 701 and New India Assurance Company Limited V/s Suresh Chandra Aggarwal*** reported in ***(2009) 15 SCC 761***.

7. Admittedly, the vehicle involved in the accident was insured with the appellant. As per the view of the Hon'ble Apex Court on the principle of pay and recover, the

appellant is liable to pay the award amount and then recover it from respondent no.2. Regarding the issue of quantum, I find no substance in the contention of the learned counsel for the appellant as the learned Tribunal has considered all the aspects while awarding the compensation. I find that the findings recorded by the Tribunal are legal and proper. Hence there is no merit in the appeal.

8. In view of the above, I pass the following order :-

O R D E R

(i) First Appeal is dismissed.

(ii) In view of the disposal of the first appeal itself, Civil Application No.10280 of 2022 is allowed. The applicant/original claimant is permitted to withdraw the amount deposited along with accrued interest.

[S.G.DIGE]
JUDGE

SGA/-