IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 **FIRST APPEAL NO.2882 OF 2022**
WITH
CIVIL APPLICATION NO.11822 OF 2022

1. United India Insurance Company Ltd.,
through its Divisional Manager,
T.P. Hub Aurangabad Divisional Office,
Through Manager, Dayawan Complex,
2nd Floor, Station Road, Parbhani,
Tq. & Dist Parbhani. Appellant.

Versus

1. Meena w/o Jagan Solanke,
age 26 yrs, Occ. Household.

2. Manchakrao Keshavrao Solanke,
age 54 yrs, Occ. Labour.

3. Laxmibai w/o Manchakrao Solanke,
age 51 yrs, Occ. Labour.

4. Keshavrao Babarao Solanke (deceased)
deleted as per order dated 6.1.2021.

5. Gayabai w/o Keshavrao Solanke,
age 71 yrs, Occ. Household,

Resp nos.1 to 5 R/o Yehalgaon Solanke,
Tq. Aundha Nagnath, Dist. Hingoli.

6. Gajanan Maroti Solanke,
age 37 yrs, Occ. Business,
R/o Yehalgaon (Solanke),
Tq. Aundha Nagnath,
Dist Hingoli. R-1 to 5 orig claimants
Resp No.6 orig opp no.1

...

Advocate for Appellant : Mr Atul B. Gatne
Advocate for Respondents : Mr. D.M. Shinde

aaa/-

...

CORAM : S. G. CHAPALGAONKAR, J.
Dated : July 27, 2023

...

JUDGMENT :-

1. By this appeal, the appellant/insurer impugns the award passed by the Motor Accident Claims Tribunal, Hingoli, in MACP no.25 of 2014 dated 20.3.2021.

2. Mr. Gatne, learned counsel appearing for the appellant would submit that his limited grievance in the appeal is that the appellant insurer was not given sufficient opportunity to prove the defence of swapping of the driver. According to him, the FIR itself shows that the owner of the vehicle i.e. Gajanan Salunke was driving the vehicle at the time of the accident, however, subsequently in the charge-sheet name of some other person is shown as the driver. He submits that the driver/owner of the vehicle was not holding valid driving licence and with a view to avoid the difficulty, name of the driver has been swapped while filing the charge-sheet. In pursuance of such defence, the application was made before the Tribunal for issuance of the witness summons to the I.O./investigator, who has recorded statement/FIR. Mr. Gatne, learned counsel submits that although the Court had issued a witness summons, however, before service could be effected, the evidence was closed by the Court.

3. Mr. Shinde, learned counsel appearing for the claimants, however, opposed the submissions contending that sufficient opportunity was given to the insurance company to prove it's defence. Witness summons were issued at the instance of the insurance company. Report was received without service, however, further steps were not taken in time. Therefore, the Tribunal was

constrained to close the evidence and no illegality can be found in the approach of the Tribunal.

4. Having considered the submissions, advanced by the respective parties, it is apparent that, prima facie, there is inconsistency in the FIR and charge-sheet regarding name of the driver. Learned counsel for the insurance company in its endeavor to prove the defence has taken steps and witness summons was issued, however, it has returned back with endorsement that the concerned officer has been retired from service. The insurer could not take steps to issue witness summons on the address of the retired employee from the police department. The tribunal has ultimately closed the evidence.

5. Taking into consideration the aforesaid aspect and nature of the defence, it would be appropriate to grant one more opportunity to the appellant-insurer with certain riders. Similarly, it is necessary to protect the interest of the claimants, who are waiting for just compensation since the year 2014. In the aforesaid circumstances, following order is passed.

O R D E R

i. The First Appeal is partly allowed.

ii. The judgment and award passed by the Motor Accident Claims Tribunal, Basmathnagar in MACP No.25 of 2014 dated 20.3.2021 is hereby quashed and set aside.

iii. Matter is remitted to the Tribunal for recording of the evidence of witnesses at the instance of the Insurance Company.

iv. The appellant-insurance company shall take necessary steps to record the evidence of the desired witness within a period of eight weeks from the date of receipt of this order and complete hearing of claim petition within a period of four weeks thereafter. Parties to appear before the Tribunal on 10th August, 2023. Notice of proceeding be given to the Respondent-owner of vehicle. Appellant to serve such notice by any permissible mode.

v. The Tribunal shall conclude the proceedings within a period of (12) Twelve weeks from the date of receipt of this order.

vi. The amount deposited by the Insurance Company in this Court shall be remitted to the Tribunal.

vii. The Tribunal shall permit withdrawal of 75% of the amount to the claimants in terms of the apportionment that was made under the impugned award dated 20.3.2021. Balance 25% amount shall remain with the Tribunal till disposal of the claim petition. Subject to final order that would be passed by the Tribunal, balance of amount shall be disbursed.

viii. The Tribunal would also be at liberty to deliberate on the question of quantum, if so raised on behalf of the appellant-insurance company.

ix. First Appeal is accordingly disposed off. Pending Civil Application, if any, stands disposed off.

(S. G. CHAPALGAONKAR, J.)

...

aaa/-