IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO. 68 OF 2006

1. The New India Assurance Co. Ltd.,
New India Assurance Building, M.G. Road,
Fort, Mumbai.

2. The New India Assurance Co. Ltd.,
through its Branch Manager, Old
Cotton Market, Akola. **... Appellants**

.. Versus ..

Abdul Qadri Abdul Ajiz,
C/o. Udai Transport, Rally Gin Compound,
Akola. **...Respondent**

Shri M.B.Joshi, Advocate for appellant/s.
Shri R.M.Tiwari, Advocate h/f. Shri R.C.Joshi, Advocate for respondent.

CORAM : SMT. M.S. JAWALKAR, J.
DATE : 03/10/2023

ORAL JUDGMENT

Heard.

2. This Court while admitting the Second Appeal framed the following substantial question of law vide order dated 09/02/2007:-

> *"Whether the suit filed by the respondent was maintainable before the Civil Court in the teeth of the provisions of Section 175 of the Motor Vehicles Act and there was inherent lack of jurisdiction necessarily rendering the impugned judgements and decrees null and void?"*

3. The short point involved in the matter is, whether Civil Court was having jurisdiction to award the compensation and damages to the owner of the vehicle ?

4. The brief facts of the case can be summarized as under:-

The respondent/plaintiff was the owner of Truck bearing No. MH-30/A-9229 insured with the appellants/ defendants' company. The said Truck while on its route to Nizamabad met with an accident on 13/08/1993 on National Highway No.7. The insurer deputed a Surveyor. The said Truck was brought to repair to Akola. The repair was undertaken by the authorized dealer of TATA Vehicles viz. M/s. Sunder Automobiles. It is the contention of the respondent that the insurance agency did not conduct the proper investigation. On the contrary, the appellants' company submits that there were certain lapses on the part of the respondent itself in production of documents. Therefore, the respondent/plaintiff filed a suit bearing Spl. Civil Suit No. 117 of 1994 before learned Trial Court (i.e. Jt. Civil Judge, Senior Division, Akola) and claimed the amount of Rs. 75,000/- towards repairs, damages of Rs. 20,000/- for the alleged delay in repair of 20 days, Rs. 9,000/- towards interest and Rs. 500/- towards notice charges.

5. The appellants' company filed a written statement in the suit and resisted the said suit. The learned Trial Court decreed the said suit on 16/07/1996 to the tune of Rs. 84,500/- along with costs of the suit. Thereafter, the insurance company challenged the said decree before learned lower Appellate Court (i.e 4th Ad-hoc Addl. District Judge, Akola) by filing R.C.A. No. 357/2000 which has been dismissed by the judgment and decree dated 29/11/2004, by confirming the judgment and decree of learned Trial Court. Being aggrieved by the same, the present Second Appeal is filed.

6. The substantial question of law is in regard of jurisdiction in view of Section 175 of the Motor Vehicle Act (for short, 'the Act'). This point was not raised before both the Courts below. However, the question of jurisdiction raised on the

ground of lack of territorial jurisdiction. The Second Appeal has admitted on the same.

7. I have heard both the parties at length.

8. Section 175 of the M.V. Act reads as under:-

> ***"175. Bar on jurisdiction of Civil Courts.***--*Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court."*

9. The learned counsel for the appellants relied ***G. MD. Masoom V/s. S.K. Khader Vali and anr.*** reported in ***2004 (2) T.A.C. 433 (AP),*** wherein the Andhra Pradesh High Court held that, the owner is entitled to claim damages for the vehicle involved in the accident. The Civil Court has no jurisdiction to award compensation after the amended provisions of Sections 165 and 166 of the Act which have come into force after the Motor Vehicle Accident Act, 1988 as there is express bar of entertaining by Civil Court and the Civil Court cannot entertain a

claim in respect of damage caused to the vehicle involved in the accident.

10. Learned counsel for the respondent vehemently opposed the contentions of the appellants and drawn my attention to Section 165 of the Act which reads as under:-

> *"**Section 165. Claims Tribunals.--** (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.*
>
> *Explanation.--For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under [1][section 164].*
>
> *(2) ………....*
>
> *(3) ………....*
>
> *(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them."*

11. The learned counsel for the respondent relied on the judgment of Allahabad High Court in the case of ***the New India Assurance Co.Ltd. through Asst. Manager (Legal Cell), Allahabad V/s. IVth Additional District Judge/Motor Accidents Claims Tribunal, Azamgarh and anr.*** reported in **2012 SCC OnLine All 198,** wherein the appellant insurance company raised the ground that the claim petition for compensation with regard to owner's vehicle does not come within the ambit of Section 165 of the Act and the Allahabad High Court relied on the judgment of the Hon'ble Apex Court in the case of ***Dhanraj V/s. New India Assurance Co. Ltd., (2004) 8 SCC 553***, wherein it is held that, Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle. The Allahabad High Court held as under:-

> ***"8.*** *It is apposite to consider certain provisions of the Act. Sections 165 and 167 as contained in Chapter-XII of the Act provide for establishment of Claims Tribunal and the application for compensation. State Government has been authorized under Section 165 of the Act to constitute one or more Motor Accidents Claims Tribunals by notification in*

the Official Gazette for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or "damages to any property of a third party so arising", or both."

13. *Section 147 lays down the requirements of policies and limits of liability. Its sub-section (2)(b) provides that a policy of insurance shall cover any liability incurred in respect of any accident, up to the limit provided therein. Clause (b) of Section 147(2) provides that the liability under a policy of insurance would be in respect of damage to any property of a third party. Now coming to Section 165 of the Act which deals with the Claims Tribunal. It provides for the establishment of Claims Tribunal for the purpose of adjudicating upon claim petition for compensation in respect of accidents*

(1) involving the death of, or bodily injury to, persons arising out of the use of motor vehicles; or

(2) ***damages to any property of a third party so arising;*** *or*

(3) both.

14. *A plain reading of the aforesaid provision would show that the Claims Tribunal has jurisdiction to entertain claim petition with respect to damages to any property of a third party alone. The use of words "third party" is of some significance. It necessarily excludes the claim for damages to a property other than of a third party. The use of word "third party" in the last clause of Section 165(1) is indicative of the legislation intention that the damage to owner's property is not within the ambit and scope of Claims Tribunal. Payment of compensation involving death or bodily injury or damages to any property or both to a third party is conceptually different to payment of such compensation to the injured person for damages to his own vehicle, under the Act."*

12. As such, a plain reading of the aforesaid provision would show that the Claims Tribunal has jurisdiction to entertain claim petition with respect to damages to any property of a third party alone. It necessarily excludes the claim for damages to a property other than of a third party. As such, the bar under Section 175 would be there where the Claims Tribunal has been constituted

for any area under Section 165 of the Act. As such, the claim for compensation with regard to owner's vehicle does not come within the ambit of Section 165 of the Act. Therefore, the Civil Court has jurisdiction to entertain the claim for compensation as well as damages caused to the owner of the vehicle. Accordingly, the substantial question of law is answered in negative and it is held that the Civil Court has jurisdiction to entertain the claim for compensation and damages sustained by the owner of the vehicle. Accordingly, the appeal stands dismissed.

13. The respondent is permitted to withdraw the amount deposited by the appellants with this Court along with accrued interest.

[SMT. M.S. JAWALKAR, J.]

B.T.Khapekar