IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 134 OF 2015

United India Insurance Co. Ltd.
Through its Divisional Office,
Divisional Manager, Aurangabad ….Appellant

VERSUS

1. Ankush Arun Pawar
2. Yeshwant Laxman Watchkawade …..Respondents

WITH

FIRST APPEAL NO. 39 OF 2015

United India Insurance Co. Ltd.
Through its Divisional Office,
Divisional Manager, Aurangabad ….Appellant

VERSUS

1. Bharat Arun Pawar
2. Yeshwant Laxman Watchkawade …..Respondents

WITH

CIVIL APPLICATION NO. 483 OF 2015
IN FA/134/2015

United India Insurance Co. Ltd, Aurangabad .....Applicant

VERSUS

Ankush Arun Pawar And Another .....Respondents

WITH

CIVIL APPLICATION NO. 159 OF 2015
IN FA/39/2015

United India Insurance Co. Ltd. Aurangabad ...Applicant

VERSUS

Bharat Arun Pawar And Another .....Respondents

Mr. S.V. Kulkarni, Advocate for appellant
Mr. A.B. Tele, Advocate for respondent No. 1 in both appeals.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th JUNE, 2024

JUDGMENT:

1. Heard.

2. Admit. Taken up for final hearing with the consent of parties.

3. Both these appeals are directed against judgments and awards dated 03.03.2014 passed by Motor Accident Claims Tribunal, Osmanabad in M.A.C.P. Nos. 337/2008 and 338/2008.

4. On 16.05.2007 claimant Ankush Pawar and his brother Bharat Pawar were proceeding towards village Javla (Kh), Taluka- Kallam by scooter bearing No. MH-22-A-5300. Bharat was driving the scooter and Ankush was pillion rider. The scooter was being driven at a moderate speed and with due care and caution by the left side of the road. When the scooter reached at village Javla (Kh) near the fields of Bhagwan Lomte and Nanasaheb Lomte at about 3.00 to 3.30 pm, one auto rickshaw bearing No. MH-12-FA-4357 came from opposite direction at a high speed, it was being driven in rash and

negligent manner and gave dash to the scooter. Ankush and Bharat were thrown on the road and sustained grievous injuries. Ankush suffered grievous injuries to his right leg and suffered 20% permanent disability. Bharat also suffered grievous injuries to his right knee and suffered 12% permanent disability. Ankush by filing M.A.C.P. No. 337/2008 claimed compensation of Rs. 1,50,000/- and Bharat claimed compensation of Rs. 1,00,000/- by filing M.A.C.P. No. 338/2008.

5. After recording evidence and hearing parties, the Tribunal has partly allowed both the petitions and awarded Rs. 1,47,000/- to Ankush and Rs. 73,000/- to Bharat. In these first appeals insurance company has not challenged the quantum of compensation, but raised a ground that since there was breach of conditions of policy, the Tribunal ought to have directed the insurance company to pay the compensation and recover it from the owner of auto-rickshaw.

6. Learned advocate for appellant submits that the auto-rickshaw involved in the accident had permit of Pune district and at the time of accident it was plying in Osmanabad district. Therefore, there is breach of condition of policy and hence the Tribunal ought to have directed the insurance

company to pay the compensation and recover the same from the owner of auto-rickshaw/respondent No. 2. In support of his submissions he relied on ***National Insurance Company vs. Challa Bharathamma***, 2004 CJ (SC) 883.

7. Learned advocate for claimants, on the other hand, supported the impugned judgments and awards passed in favour of claimants. He submits that Tribunal has recorded a finding of fact that insurance company has failed to prove that there was breach of condition of policy and therefore there is no merit in the first appeals filed by insurance company and same are liable to be rejected at the threshold.

8. Heard learned advocate for appellant and learned advocate for claimants. Perused the record and the citation relied upon by learned advocate for appellant.

9. The Tribunal in M.A.C.P. No. 337/2008 framed following point on the point of breach of conditions of policy.

3. Whether the respondent No. 2 proves that there is breach of conditions of policy as contended?	Not proved.

Following point is framed in M.A.C.P. No. 338/2008.

4. Whether the respondent No. 2 proves that there is breach of conditions of policy as contended?	In negative.

10. Perusal of documents placed on record shows that insurance company has failed to substantiate its contention that there was breach of conditions of policy. The Tribunal has recorded in the impugned judgments and awards that no evidence has been adduced on behalf of respondent to prove that there is breach of terms and conditions of policy by owner of auto-rickshaw. Since the insurance company has failed to prove by sufficient evidence that owner/driver of auto-rickshaw has violated conditions of permit, the Tribunal is justified in arriving at a conclusion that insurance company has failed to prove that there is breach of conditions of policy. The Tribunal has given proper reasons while arriving at said conclusion.

11. No jurisdictional error or error of law is committed by Tribunal while passing the impugned judgments and awards. First appeals being devoid of merits are dismissed with no order as to costs.

12. In view of disposal of first appeals, civil applications are disposed of.

Bhagyawant Punde

13. Remaining 50% amount along with accrued interest be paid to the claimants.

[NITIN B. SURYAWANSHI, J.]

Bhagyawant Punde