IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3901 OF 2019

Cholamandalam MS General Insurance
Company Ltd., Through its Branch Manager
Branch Office IIIrd Floor, Oberary Tower,
Civil Line Jalna Road, Aurangabad.
Tq. & dist. Aurangabad (M.S.) ...APPELLANT

VERSUS

1. Chandrakant S/o Manika Jakalwad
Age- 30 years, Occ. Now Nil
R/o. Patalganga, Tq. Kandhar
Dist. Nanded.

2. Dnyanoba S/o Gangaram Torne
Age- 42 years, Occ. Agri & Business
R/o. Umraj, Tq. Kandhar,
Dist. Nanded. ...RESPONDENTS

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Mr. A.S. Usmanpurkar, Advocate for appellant
Mr. Taher Ali Quadri, Advocate for respondent No. 1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 31st JULY, 2024

ORAL JUDGMENT :

1. Heard.

2. Admit. Taken up for final hearing by consent.

3. Insurance Company has challenged no fault liability amount deposited by it on the ground that the cheque given by the owner of offending vehicle towards premium of insurance

company was dishonored and intimation to that effect was given to the owner prior to the accident. Therefore, the Insurance Company is not liable to pay the no fault liability amount.

4. It is also informed at the bar that claim filed by claimant under section 163A of the Motor Vehicles Act is pending before the Tribunal.

5. There appears merit in the challenge raised by Insurance Company to the impugned order in view of decision in *United India Insurance Company Limited vs. Serjerao and Others*, AIR 2008 SC 460, as the Tribunal has not adverted to the merits of challenge raised by the Insurance Company. In that view of the matter, impugned order is liable to be quashed and set aside. Hence, the following order:

ORDER

i) Impugned order dated 19.08.2019 passed by Ad-hoc District Judge-1, Member, M.A.C.T, Kandhar, below Exhibit-5 in M.A.C.P. No. 31/2017, is quashed and set aside.

ii) The matter is remanded back to the Tribunal to take decision on the main claim petition and No Fault Liability Application afresh on merits, after hearing the parties.

iii) All the contentions of respective parties are kept open.

iv) No Fault Liability amount deposited by the Insurance Company be sent back to the Tribunal.

v) Record and Proceedings be sent back.

vi) First Appeal is disposed of.

[NITIN B. SURYAWANSHI, J.]

Bhagyawant Punde