IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 115 OF 2004

The New India Assurance Company Ltd. having its Registered and Head office at New India Assurance Building, 87, M.G. Marg, Fort, Mumbai and Divisional office, at Aurangabad by it's authorised representative Shri. Age years, Occu. Service, R/o. Aurangabad. **....Applicant (Ori. Resp. No.3)**

Versus

1. Makbul Ahmad Syed, Age 53 years, Occu. Mehanic Fitter, R/o. Neweasa, Tq. Newasa, Dist. Ahmdnagar. **(Ori. Claimant)**

2. Sow. Sunanda w/o. Chandrabhan Yeshwant, Age Major, Occu. Business, R/o. Gopalwadi, Tq. Gangapur, District Aurangabad.

3 Chandrakant s/o. Ashinath Gadkar, Age Major, Occu. Driver, R/o. Bhende Khurd, Tq. Newasa, District Ahmdnagar. **(Ori. Resp. Nos. 1 and 2)**
....Respondents.

Mr. D.S. Kulkarni h/f. Mr. S.L. Kulkarni, Advocate for appellant.

Mr. A.S. Bajaj, Advocate for respondent No. 1.

Mr. S.G. Thombre, Advocate for respondent Nos. 2 and 3.

CORAM : T.V. NALAWADE, J.
DATED : 23rd November, 2015.

JUDGMENT :

1) The appeal is filed against judgment and award of Claim Petition No. 304/1998 which was pending before the

Claims Tribunal, Aurangabad. The Tribunal has granted compensation of Rs. 39,000/- in respect of injuries sustained by the claimant in motor vehicle accident. Only the Insurance Company of the offending vehicle has challenged the decision. Heard the learned counsel for the appellant.

2) The accident took place on 22.2.1998 at about 10.00 a.m. on Aurangabad - Waluj road near Golwadi Phata. The spot is situated within local jurisdiction of Cantonment Police Station, Aurangabad. The claimant was travelling in a jeep bearing No. MH-20/E-3449 and it is his contention that he was gratuitous passenger. It is contended that due to rash and negligent driving of the jeep, the jeep turned turtled and accident took place. It is contended that claimant sustained injuries to his left leg and other parts of the body and due to injuries, he is suffering permanent disablement. It is his contention that by doing some mechanic work, he was earing Rs. 1500/- per month and he was making income by cultivating agricultural land which is around 20 Acres and due to the injuries sustained in the accident, he cannot do any work. He has contended that he is entitled to get atleast Rs. 5.2 lakh as compensation. The claim was restricted to Rs. one lakh.

3) The owner of the vehicle filed written statement at Exh. 16. The fact of the accident was not disputed. It is contended that due to mechanical fault, the accident took place. The other contentions regarding the loss of earning capacity etc. are not disputed.

4) The Insurance Company filed written statement at Exh. 21. The Insurance Company contended that the vehicle was insured as a private vehicle, but at the relevant time, it was being used for carrying fare paid passengers and there has been breach of conditions of policy.

5) Issues were framed on the basis of aforesaid pleadings. The claimant and respondent No. 1 have given evidence. The Insurance Company has not given any evidence.

6) The evidence of the claimant shows that he was travelling as a gratuitous passenger in the jeep. In the cross examination, it is suggested that he was fair paying passenger and accordingly statement was also given by him to police. His attention was drawn to the statement given to police, but he denied that he had given such statement. The learned counsel for Insurance Company submitted that as on the basis of this

report, crime was registered and that document is given exhibit, the contents of document can be read and it can be inferred that he was fair paying passenger and there was breach of conditions of policy. This submission is not acceptable as there is substantive evidence that he was gratuitous passenger. The driver of the jeep has also given the evidence that as the claimant wanted to come to Aurangabad to meet his ailing son, he had allowed the claimant to board the jeep and claimant was gratuitous passenger. He has given evidence that as the popular shaft of the jeep was broken, the accident took place.

7) It appears that in respect of the accident, crime was registered for the offences punishable under sections 279, 337, 427 of Indian Penal Code and section 66 r/w. 192 of Motor Vehicle Act. However, due to the aforesaid circumstances and as there is no witness examined by the Insurance Company to prove the breach, this Court holds that the Insurance Company cannot be exonerated.

8) The compensation of only Rs. 39,000/- is given on the principle of fault and the particulars of the compensation are given. As per the record, there was fracture of grade three, which was compound fracture of tibia fibula left. Due to this

injury permanent disability is to the extent of 18% and claimant was indoor patient for about one month. The age of the claimant was around 50 years at the relevant time and he was working as a fitter. On the principle of no fault, the amount of Rs. 25,000/- can be given. It can be said that some amount was spent and so, under the other heads, some compensation is given. It is a meager amount and no interference is possible on the point of quantum also.

9) In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

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