IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No.364 of 2000

* The United India Insurance Co. Ltd.
Through its Branch Manager,
Parbhani.
Through Divisional Manager
(Constituted Attorney),
United India Insurance Co. Ltd.
Divisional Office, Aurangabad. .. **Appellant.**

Versus

1) Dnyaneshwar s/o. Vithalrao Ughade
(Shinde), Aged 30 years,
Occupation : Service,
R/o Samga, Taluka Hingoli,
District Parbhani.

2) Riyasatkhan s/o. Ahmedkhan,
Age Major, Occu: Business,
R/o Vinkar Colony, Nanded,
Taluka & District Nanded. .. **Respondents.**

Shri. D.V. Soman, Advocate, for appellant.

Shri. M.P. Kale, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 16th DECEMBER 2015

JUDGMENT:

1) The appeal is filed by the insurance company against the judgment and award of Claim Petition No.147

of 1996 which was pending before the Claims Tribunal, Parbhani. In injury claim the compensation of Rs.90,000/- is granted. Both the sides are heard.

2) The main challenge to the decision is on the basis of contention that the driver of the offending vehicle was not holding valid and effective driving licence at the relevant time. The accident took place on 4-11-1998 at 12.30 p.m. on Basmath-Parbhani road near Zero Phata. This spot is situated within local jurisdiction of police station Hatta. The claimant was driving a motor cycle and he has made allegation that the matador bearing No. MH-31-4623 gave dash to his vehicle. The driver was not impleaded as party to the matter and the claim petition was filed against the owner of the vehicle.

3) The insurance company filed written statement and it contended that the driver was not holding valid and effective driving licence to drive the tempo.

4) The claimant has examined himself. There is no need to discuss that evidence as the fact of the

accident is not disputed. The claimant has relied on Form AA and copies of police papers. The papers show that crime was registered for offences punishable under sections 279, 338 and 427 of the Indian Penal Code. There is no record to show that crime was registered for offence punishable under section 3 read with section 181 of the Motor Vehicles Act, for driving the vehicle without valid licence. Charge sheet was filed for the aforesaid offences and copy of charge sheet is on the record.

5) In view of these circumstances, it was necessary for the insurance company to lead some positive evidence. In ordinary course police take in custody the record, the report under section 134 of the Motor Vehicles Act as such report is required to be given by the driver. As no crime was registered for offence under section 3/181 of the Motor Vehicles Act, burden was heavy on insurance company to prove the breach contended. It appears that no attempt was made to call the driver though the proceeding was *ex parte* against the owner. Due to this circumstance, it cannot be said that insurance company was not expected to give evidence to

prove its case. Thus, there was no other alternative before the Tribunal than to hold that the insurance company is liable to pay compensation and indemnify the owner.

6) Argument was advanced by the learned counsel for the insurance company that the claims awarded under different heads have no basis and reasoning given for that is also not convincing. It appears that the Tribunal gave compensation under head of non-pecuniary damages and gave some amount for mental and physical shock, pain for loss of natural life due to loss of teeth and due to depression which he may face while walking, for hardship, discomfort, disappointment, frustration ad mental stress of life. Under these heads amount of Rs.56,000/- is awarded by the Tribunal. Under the head of amount spent for medicines, amount of Rs.17,451/- is awarded and the amount of Rs.16,660/- is awarded in respect of damage caused to the motor cycle of the claimant in the accident.

7) It can be said that under major heads like compensation under head of permanent disability, compensation under the head of loss of income, compensation under the head of amount spent on medicines and compensation in respect of damages caused to the vehicle could have been granted by the Tribunal though further classification is attempted by the Tribunal. The aforesaid discussion, however, also shows that under separate head of loss of future earning nothing is given by the Tribunal.

8) The claimant was aged about 30 years at the relevant time. the police papers show that he sustained grievous injuries in the accident. There are bills of medicines which are exhibited by the Tribunal and so at this stage this record needs to be accepted as it is. There are discharge cards prepared by the Government hospital showing that he was indoor patient as there was fracture like radius right with dislocation of inferior radius ulna with fracture of ulna and radius left hand. Handicap certificate is produced to show that due aforesaid injuries there is permanent disability to the extent of 30%. When

he was working as labour the Tribunal could have easily inferred that his earning capacity has come down at least to the extent of 30% as he suffered fracture injuries to both hands. A person doing labour work is required to do hard physical work. Labour is required to lift heavy objects. He is required to dig by using spade etc and so when there are fracture injuries like the present one he cannot be expected to work with same efficiency with which he was working in the past. Considering the age of the claimant the Tribunal could have granted much more amount under the head of loss of future income. Similarly under the head of permanent disability separate amount could have been awarded.

9) In the police papers there is record that the vehicle of the claimant was damaged and the value of damage was more than Rs.16000/-. It was purchased in the same year, it was new brand motor cycle. One bill given by the workshop is produced but owner of the workshop is not examined. The Tribunal has granted compensation under the head of damage to the vehicle on the basis of police papers and this Court holds that the

Tribunal has not committed error in granting such compensation. Thus, much more compensation could have been granted by the Tribunal in view of the nature of injuries sustained by the claimant and the nature of damage caused to his vehicle which can be seen in the panchanama. This Court holds that it is not possible to interfere in the decision of the Tribunal.

10) In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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