

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 653 OF 2014

The New India Assurance Co. Ltd. .. Appellant

Versus

Prakash Uttam Gunwant and another .. Respondents

Shri S. R. Bodade, Advocate for the Appellant.

Shri R. B. Deshpande, Advocate for the Respondent No. 1.

Shri R. A. Tambe, Advocate for the Respondent No. 2.

CORAM : S. V. GANGAPURWALA, J.

DATE : 10TH SEPTEMBER, 2015.

PER COURT :

. The present respondent No. 1 had filed a petition for compensation U/Sec. 166 of the Motor Vehicles Act on account of injuries sustained by him in an accident. The said application is partly allowed. The Insurance Company has assailed the same in the present appeal.

2. Mr. Bodade, the learned counsel for the appellant submits that, it is case of breach of policy. The jeep was registered as a private domestic vehicle, however was used for commercial purpose. At the time of accident the said jeep was carrying eleven fare paying passengers and Sakal news paper. This would show that the vehicle was being used for commercial purpose. In

the light of that, the appellant could not have been held liable to pay the compensation amount. The learned counsel further submits that, the Court can take judicial note of the fact that, eleven passengers are traveling in the said vehicle. The said vehicle was being used for commercial purpose and they were fare paying passengers. All the persons cannot be friends of driver. The learned counsel further submits that, the said jeep was not holding valid permit. On that count also the present appellant would not be liable to pay compensation amount.

3. The aspect of contributory negligence has not been considered at all. On this ground also the judgment is vitiated. The driver of the vehicle was not holding the effective driving license. There is breach of policy. The learned counsel for the appellant further submits that, the disability certificate is not proved. There is no signature of the claimant on the said certificate. The doctor who has issued the certificate has not treated the claimant. As such, said certificate cannot be relied.

4. The learned counsel for the respondent/claimant submits that, the license is on record. The learned counsel for the respondent No. 1/claimant supports the judgment and award.

5. I have considered the submissions. The claimant has come with the case that the driver of the said jeep was his friend and he was given the lift in the said jeep. The appellant has not led

any evidence to impeach the same. The evidence on record has been appreciated by the Tribunal and held that the claimant was not a fare paying passenger. There is only one petition filed for compensation.

6. The license is on record, as such it cannot be said that the driver of the vehicle was not holding valid license. As far as aspect of contributory negligence is concerned, the claimant was an occupant in the said jeep. As such, even if the driver of other vehicle was also negligent to some extent, it would be case of composite negligence and not a contributory negligence. In the case of composite negligence claimant can recover the amount of compensation from any of the respondent. As such, the case of contributory negligence is of no avail.

7. The evidence of doctor who has clinically examined the claimant in his evidence has stated that, he has issued the certificate on the basis of Doctor's Manual. The said doctor is an orthopedic expert. The said evidence has been relied upon. Considering the disability 30% of the amount of compensation has been calculated. In the light of the above, the first appeal is dismissed. No costs.

[S. V. GANGAPURWALA, J.]