

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

First Appeal No. 194 of 2004

* The United India Insurance Company Ltd.
Through its Divisional Manager,
Osmanpura, Aurangabad. .. **Appellant.**

Versus

- 1) Kerba S/o Laxmanrao Bolanwadi,
Age 43 years,
Occupation : Agriculture,
R/o Village Masalga,
Taluka Kandhar, District Nanded.
- 2) M/s. Swapnaja Estate Pvt. Ltd.,
Through its Director
Santosh Sudhakar Rao Mukhedkar,
Age Major,
R/o Kandhar, Taluka Kandhar,
District Nanded. .. **Respondents.**

Shri. S.G. Chapalgaonkar, Advocate, for appellant.

CORAM: T.V. NALAWADE, J.

DATE : 19th NOVEMBER 2015

JUDGMENT:

- 1) The appeal is filed against the judgment and award of Claim Petition No.188/2000 which was pending in the Court of the Additional District Judge, Nanded, the

Claims Tribunal. In the claim filed for compensation in respect of injury sustained in motor vehicle accident by the respondent, compensation of Rs.63,000/- is granted under section 166 of the Motor Vehicles Act. Heard learned counsel for the Insurance Company. Other side has not turned up even after service of notice of the proceeding on the other side.

2) It is the case of the original claimant, Kerba, that in the accident dated 5-12-1999 he sustained grievous injuries. At the relevant time he was travelling in mini bus bearing No.MH-26-B-481 and the mini bus met with accident as the driver lost control over it. It is the case of the claimant that in the past he was doing labour work and he was earning Rs.50/- per day but due to injury sustained in this accident, he cannot do any work. He contend that he was required to spend amount of Rs.5000/- on treatment. He contended that he is suffering from permanent disability due to the injury. He had claimed Rs.one lakh.

3) The claim was contested by the Insurance Company by filing written statement. The Insurance Company contended that the claimant needs to prove that he was travelling in the vehicle at the relevant time and he had sustained injury. It was denied that the claimant was travelling in the said vehicle. Other defences like breach of conditions of policy were taken as more passengers than permitted were travelling in the vehicle at the relevant time.

4) It appears that though there were many persons travelling in the vehicle only one claim was filed i.e. present claim. The Insurance Company did not examine anybody to prove that the liability was of limited nature. Insurance certificate was given exhibit. Exhibit 26 shows that coverage was given to persons of 21 + 2. In view of these circumstances, evidence in rebuttal was necessary from the side of the Insurance Company but no such evidence is given.

5) The claimant has given evidence that at the relevant time he was travelling in the vehicle and after the

accident he was admitted in Government hospital where he received treatment. He placed reliance on the record like copy of FIR, copy of spot panchanama, disability certificate and the discharge card issued by the Government Hospital. These documents were exhibited by the Tribunal.

6) The discharge card shows that the claimant was admitted as MLC Case No. S.B.F./5433/99 and he was indoor patient in the hospital from 5-12-1999 to 7-12-1999. He had fracture of clavicle. Same Government hospital issued disability certificate and it shows that due to aforesaid injury, the claimant is suffering from permanent disability and its extent is 18%.

7) The learned counsel for the Insurance Company mainly submitted that there is no record to show that the claimant was really travelling in the vehicle. It is true that neither side produced record like copy of charge sheet or copy of police statement of the claimant. In any case, when there was substantive evidence given by the claimant and there is medical record of aforesaid nature,

it was necessary for the other side to give some evidence in rebuttal. As there is nothing in rebuttal, there was no other alternative before the Tribunal than to hold that the claimant sustained injury in the said accident. There is not much dispute over the quantum of compensation. The Tribunal has given compensation under different heads. This Court sees no reasons to interfere in the decision. In the result, the appeal stands dismissed.

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

rs1