

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

FIRST APPEAL NO.1886 OF 2014

The United India Insurance
Co.Ltd., Aurangabad
through its Divisional Manager,
Aurangabad

..Appellant

Versus

Shaukat s/o Chand Pathan
and two others

..Respondents

Mr A.G. Kanade, Advocate for appellant
Mr J.R. Pawar, Advocate respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 17th April 2015

PER COURT

1. Mr Kanade, learned Counsel for the appellant - Insurance Company, while questioning the legality of the award delivered by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No.505 of 2010 has taken me through the evidence discussed by the Tribunal so as to urge that in case of the contributory negligence, liability of the Insurance Company as is ordered should be reduced. In addition to above, he has pointed out variance in the monthly income of the claimant.

2. Upon going through the observations made by the Tribunal in paragraphs 12 to 15 of the award delivered by the Motor Accident Claims Tribunal, Aurangabad coupled with the evidence of the claimant and admission given in the cross-examination that the accident occurred because of negligent driving of two wheeler by

Shoukat Pathan, learned Counsel for the appellant would urge that the judgment delivered by the Tribunal is liable to be set aside with appropriate modification.

3. If the above submissions are tested in the light of findings recorded by the Tribunal with that of analysis of evidence of the claimant, it is required to be noted that even if the case of the appellant that of contributory negligence is to be accepted, the same is not proved by ascertaining the degree of negligence on the part of claimant. It was duty of the appellant – Insurance Company to prove the same. Apart from that the difference in the monthly wages of the claimant in between Rs.8,000/- to Rs.9,000/- will be of hardly any impact on the merits of the matter.

4. The learned Counsel for the appellant would urge that the Doctor from the Sawji hospital, who has treated the claimant was not examined and Dr. Jaiswal who has examined him and issued certificate of disability to the claimant certifying 35% disability had never treated the claimant.

5. If the above submissions made by the learned Counsel for the appellant are analysed with the findings recorded by the Tribunal, it is not mandatory that the person claiming disability certificate should be under the treatment of such Doctor, at least no such statutory requirement is brought to the notice of this Court.

6. No cogent evidence is brought on record so as to discard the said evidence of Doctor.

7. No case for interference is made out. As such, first appeal stands dismissed.

(N.W. SAMBRE, J.)

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