IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No. 82 of 2004

* United India Insurance Co. Ltd.
New Osmanpura, Aurangabad
District Aurangabad. .. **Appellant.**

Versus

1) Santosh s/o Mohansing Chavan,
Age 22 years,
Occupation : Labour,
R/o. Samta Nagar, Aurangabad,
Taluka & District Aurangabad.

(Appeal is dismissed against
respondent No.1 as per
Registrar's order dt 12-7-2005)

2) Shaikh Ashpak Shaikh Sikandar,
Age 33 years,
Occupation : Business,
R/o Wadala, Taluka Vaijapur,
District Aurangabad.
At present R/o. Bhoishwar Nivas,
E 20: 260, Kotwalpura (Bhoiwada)
Aurangabad,
District Aurangabad. .. **Respondents.**

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

CORAM: T.V. NALAWADE, J.

DATE : 10th FEBRUARY 2016

JUDGMENT:

1) The appeal is filed against the judgment and award of Claim Petition No.253 of 1996 which was pending before the Claims Tribunal Aurangabad. The Tribunal has granted compensation of Rs.45,000/- for the injury sustained by the claimant in a motor vehicle accident and this decision is challenged in the appeal. Heard learned counsel for the insurance company.

2) The accident took place on 6-4-1995 at about 17.30 hours within local jurisdiction of Vaijapur Police Station, District Aurangabad. It is the case of the claimant that he was working as cleaner on monthly salary of Rs.400/- on a jeep bearing No. MH-20-7262. It is contended that at the time of the accident the driver of the jeep stopped the jeep right in the middle of the road and due to that another jeep which was coming from back side gave dash to the jeep No.7262 and the claimant sustained injuries in the accident. It is his case that due to the injuries which were fractures to the right leg, he cannot do any work. Under various heads he had claimed compensation of Rs.85,000/-.

3) The insurance company contested the matter by filing written statement. As the claim was made only against the owner of the jeep No.7262 the insurance company contended that the claim is not tenable due to non joinder of necessary party. It is contended that the driver was not having valid and effective driving licence. It was also contended that the risk to the claimant was not covered under the policy.

4) Before the Tribunal only the claimant gave evidence. His evidence is as per the aforesaid contentions. He has deposed that due to sudden application of brakes by driver of his jeep, another vehicle gave dash to his vehicle from backside and he sustained fracture injury to his leg. He has given evidence that he is not fully recovered and he has deposed that his earning capacity has come down. He has given evidence that he had spent around Rs.8000/- on treatment and medicines.

5) Police papers which are not disputed show that police officer gave report on the basis of information collected by him. Only the claimant was injured in that

accident and his name was mentioned in the FIR by police. Copy of spot panchanama is consistent with the case of the claimant and it shows involvement of the aforesaid jeep in the accident.

6) The claimant received treatment in Government Hospital, Aurangabad. The discharge card shows that there was fracture to right tibia. The discharge card shows that there is permanent disability to the extent of 26%. There is restriction in movement of knee and there is also shortening of the leg. Handicap Certificate is also produced in that regard and it is consistent with the evidence of the claimant. To show that vehicle No.7262 was insured, R.T.O. particulars are produced and in this document there is name of the present appellant and the number of the policy.

7) The learned counsel for the appellant, insurance company placed reliance on a case reported as **AIR 2003 SC 2877 (Ramashray Singh v. New India Assurance Co. Ltd.)** and he submitted that there is no statutory liability to give coverage to the cleaner of the

vehicle and it cannot be inferred that there was such coverage. This submission is not at all acceptable. When there is record of aforesaid nature it was necessary for the insurance company to produce the policy and examine witness to prove terms and conditions of policy. That was not done. The claimant is not expected to prove the policy and the burden was on the insurance company in that regard. Thus, there is no case to the insurance company on this point.

8) Meagre compensation, amount of Rs.45,000/- only is granted as compensation and in view of the evidence of the aforesaid nature and the injuries sustained by the claimant it can be said that the amount of compensation is on lower side. Much more amount could have been granted as compensation.

9) In the result, the appeal stands dismissed.

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

rsl