IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO. 300 OF 2012

United India Insurance Co. Ltd.,
Through its Divisional Manager,
Seven Hills, Jalna Road, …. **APPELLANT/**
Aurangabad. **[ORI. RESP.NO. 2]**

V E R S U S

1. Bhagwat s/o Asaram Sherkar
   Age : 31 Yrs., Occ. Agriculture,
   R/o : Pardi Mategaon, … **RESP.NO. 1 -**
   Tq. Wadvani, Dist. Beed. **[ORI. CLAIMANT]**

2. Babasaheb s/o Dadarao Ghule
   Age : Major, Occ. Rickshaw
   owner, R/o : Wadar Colony,
   Parali (V), Tq. Parali, Dist. Beed.

3. Bhagwat s/o Sheshrao Garad
   Age : Major, Occ. Driver, …. **RESP.NOS. 2 & 3-**
   R/o : At Post Neel, Tq. **[ORI. RESP.NO.**
   Dist. Sonpeth, Parbhani. **1 &3]**

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Mr. S.G.Chapalgaonkar, Advocate for appellant.
Mr. Girish Rane, Advocate for R.No. 1.
Mr. A.N.Nagargoje, Advocate for R.No. 2.
Mr. S.G.Munde, Advocate for R.No. 3.

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WITH

CIVIL APPLICATION NO. 137 OF 2016

IN

FIRST APPEAL NO. 300 OF 2012

Bhagwat s/o Asaram Sherkar
Age : 31 Yrs., Occ. Agriculture,
R/o : Pardi Mategaon, ... **APPLICANT/**
Tq. Wadvani, Dist. Beed. **[ORI. CLAIMANT]**

V E R S U S

1. United India Insurance Co. Ltd.,
Through its Divisional Manager,
Seven Hills, Jalna Road,
Aurangabad.

2. Babasaheb s/o Dadarao Ghule
Age : Major, Occ. Rickshaw
owner, R/o : Wadar Colony,
Parali (V), Tq. Parali, Dist. Beed.

3. Bhagwat s/o Sheshrao Garad
Age : Major, Occ. Driver, ... **RESPONDENTS/**
R/o : At Post Neel, Tq. **[ORI. OPP.NOS.**
Dist. Sonpeth, Parbhani. **2, 1 & 3]**

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Mr. Girish Rane, Advocate for applicant.
Mr. S.G.Chapalgaonkar, Advocate for R.No. 1.
Mr. A.N.Nagargoje, Advocate for R.No. 2.
Mr. S.G.Munde, Advocate for R.No. 3.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 20th JANUARY, 2016

JUDGMENT :-

1. The Appeal is filed by the insurance company to challenge the Judgment and Award of M.A.C.P. No. 120/2007 which was pending before the Motor Accident Claims Tribunal, Beed. Learned counsels for both sides are heard.

2. The Appeal is filed to challenge the decision on following 3 grounds.

[I] Two vehicles were involved and the possibility of contributory negligence of the deceased is not considered.

[II] The driver of the vehicle insured with the appellant was holding licence to drive light motor vehicle when the vehicle involved was a goods carrier and so there is breach of condition of policy.

[III] The quantum is on higher side.

3. The claim was in respect of the injuries

sustained by the claimant. He was aged 27 years at the relevant time. The accident took place on 29/11/2006 at 1.00 p.m. on Parali – Gangakhed road and the spot is situated within the local jurisdiction of Sonpeth police station. It is the case of the claimant that he was proceeding on his motorcycle and one rickshaw bearing No. MH-23/3146 came from opposite direction and it gave dash, when it was overtaking another rickshaw, to the motorcycle and accident took place. It is contended that accident took place due to the fault of the driver of rickshaw. The claim was made against the owner, driver and the insurance company of the rickshaw.

4. It is the case of the claimant that he sustained grievous injuries in the accident, which was fracture injury, to his right leg and other injuries. He was under treatment for about 6 months and was required to spend ₹ 2.5 Lacs on treatment, medicines, etc. It is his case that even after the treatment he is not fully recovered. It is his case that in the past he was cultivating his land and by selling vegetables from his field, he was making income of ₹ 7,000/- to ₹ 8,000/- per month. It is his case that due to the injuries, he can

not do any work and there is loss of future income.

5. Insurance company filed Written Statement and it denied everything. It was contended that insurance company will verify the fact of insurance. It was contended that there was negligence on the part of the claimant and so he is not entitled to get compensation. It was contended that claimant needs to prove that the driver of rickshaw was holding valid driving licence. It was contended that police had filed false case against the driver of rickshaw when there was fault on the part of the claimant.

6. In view of the aforesaid nature of defence, issues were framed. Initially there was no issue in respect of breach of conditions of policy. In the Written Statement filed by the owner, he blamed claimant for the accident and alternatively he contended that the insurance company is bound to indemnify him. Similar Written Statement was filed by the driver. It appears that subsequently on 30/05/2011 additional issues were framed and opportunity was given to the insurance company to prove that there was breach of conditions of

the policy and the driver was not holding valid and effective driving licence.

7. The claimant examined himself and his evidence is as per the aforesaid contentions. The crime was registered against the rickshaw driver for the offences punishable u/ss 279,337,338 and 427 of the Indian Penal Code. No crime was registered for driving the vehicle without valid licence. Charge sheet was also filed for these offences.

8. Police papers are not seriously disputed. Copy of spot panchanama at Exh. 30 shows that police prepared hand sketch map to show the location of the vehicles and point of impact. It is not disputed that the accident took place on Gangakhed – Parali road. There is a dispute about the directions mentioned in the map as it shows Gangakhed is situated on eastern side and Parali is situated on western side. It appears that on the basis of substantive evidence given, Tribunal has held that Gangakhed is situated on northern side and Parali is situated on southern side. The claimant was proceeding towards Gangakhed side and the motorcycle was found

on western side, which was correct side for the motorcycle. Thus, the point of impact was situated on western side. Police also came to the conclusion that there was fault of driver of rickshaw. There is substantive evidence that the respondent/driver was trying to overtake other vehicle and he came to the wrong side of the road. In view of the substantive evidence and aforesaid circumstances, it was necessary for the other side to give evidence in rebuttal. There is nothing in rebuttal. In view of these circumstances, it is not possible to interfere in the finding given by the Tribunal that the accident took place due to the fault of the driver of the rickshaw.

9. It is already observed that no crime was registered against the driver of pick-up rickshaw for driving the vehicle without licence. In view of this circumstance, it was necessary for the insurance company to lead positive evidence to prove the breach. It is contended that the rickshaw driver was holding licence for driving light motor vehicle and there was no endorsement of transport vehicle. In the case reported in **[2015] 2 SCC – 186 - Kulwantsingh & Ors. Vs.**

<u>Oriental Insurance Co. Ltd</u>., the Apex Court has considered such defence and it is held by the Apex Court that the light motor vehicle includes both transport and non transport vehicles. In view of this ratio, it is not possible to hold that there was breach of conditions of the policy.

10. For proving the quantum of compensation, there is substantive evidence of the claimant. Medical record is not seriously disputed. M.L.C. at Exh. 31 and discharge card prepared by Seth Nandlal Dhoot Hospital, Aurangabad shows that there was a fracture of D12 and due to that there was paraplegia. The fracture was by Bimalleolar of right. C.T. Scan was done particularly for obtaining spine report. It shows that there were altered marrow signals with compression fracture and anterior wedging of D12. There was posterior displacement of fractured segment causing compression over the lower dorsal cord. Due to the injuries, there is permanent disability to the extent of 40 % and it can be said that the claimant can not stand on his legs without support. Doing some work by using force or even simple lifting of objects while doing some work may not be possible in view of the

nature of injury. The bills of medicines and treatment are not seriously disputed and they are all considered by the Tribunal.

11. The record of agricultural land of the claimant is produced. The Tribunal has presumed that the monthly income of the claimant was around ₹ 3,000/- though the accident took place in the year 2006. The notional income could have been presumed on higher side. When it is not possible to do any work and there is apparently total disablement, Tribunal has held that future income has come down by 40 %. Accordingly, compensation under the head of loss of future income came to be calculated as ₹ 2.6 Lacs. The other amount is in respect of bills of medicines and treatment and it is ₹ 1,26,932/-. In respect of the amount spent, amount of ₹ 1.3 Lacs is given. Amount of ₹ 2 Lacs is given under pain and sufferings and the amount of ₹ 1 Lakh is given under the head of loss of amenities. Towards future inevitable expenses, amount of ₹ 3 Lacs is given. Thus, total amount of compensation of ₹ 9.9 Lacs is awarded by the Tribunal. In view of the nature of injuries and aforesaid circumstances, this Court has no

hesitation to hold that much more amount could have been awarded as compensation. It is not possible to interfere in the decision of the Tribunal on the point of quantum also.

12. In the result, First Appeal is dismissed. C.A. No. 137 of 2016 is allowed. The compensation amount deposited is to be disbursed as per the Award of the Tribunal.

[T.V.NALAWADE, J.]

KNP/F.A. 300.2012 - [J]