IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.658 OF 2010

Revanand S/o Vasudeo Chaturvedi,
Age:33 years, Occ. Service as
Police Constable,
R/o. Plot no.9 Sukhshanti nagar,
Mantha Naka road, Jalna.

APPELLANT
(Orig. Claimant)

VERSUS

1. National Insurance Company Ltd.,
   Through its Divisional Office,
   Divisional Manager, Hajari Chambers,
   Station Road, Aurangabad.

2. Kaleem Ahmed khan
   Age:Major, Occu.:Owner of Minidor,
   Tq. Khultabad, Dist. Aurangabad

3. Sayed Dada S/o. Syed Umer,
   Age: Major, Occu.:Driver,
   R/o. Sadatnagar, Aurangabad

(Appeal stood dismissed as against Resp.2 & 3 vide Registrar's order dated 10/01/2012.)

RESPONDENTS

Mr.Anilkumar B.Dhongde, Adv. For Appellant;
Mr. Sudhir V.Kulkarni, Adv. For Resp.no.1.

WITH
FIRST APPEAL NO.490 OF 2010

National Insurance Company Ltd.,
Through its Divisional Office,
Divisional Manager, Hajari Chambers,
Station Road, Aurangabad

APPELLANT

VERSUS

1. Revanand S/o. Vasudeo Chaturvedi
   Age: 33 years, Occu.: Service as
   Police Constable,
   R/o. Plot No. 9, Sukhashanti Nagar,
   Mantha Naka Road, Jalna.

2. Kaleem Ahmed khan,
   Age Major, occu.: Owner of Minidor
   Tq. Khultabad, Dist. Aurangabad

3. Syed Dada S/o. Syed Umer,
   Age Major, occu.: Driver,
   R/o. Sadatnagar, Aurangabad

RESPONDENTS

Mr. Sudhir V.Kulkarni, Adv. For Appellant;
Mr. Anilkumar B.Dhongde, Adv. For Resp.no.1.
None for Resp.Nos. 2 & 3 though duly served.

CORAM : P.R.BORA, J.

DATE : 17th October,2016.

ORAL JUDGMENT:

1) Since Mr. S.V.Kulkarni has instructions to appear in FA No.658/2010 on behalf of Respondent No.1, the appearance of Mr.Kadethankar, who was earlier appearing, stands discharged.

2) Since both these appeals are arising out of the judgment and order passed by Motor Accident Claims Tribunal, Aurangabad, (for short the Tribunal) in MACP No.274/2006, decided on 12th March, 2009, common arguments were heard, and I deem it appropriate to decide both these appeals by common reasoning.

3) First Appeal No.490/2010 is filed by National Insurance Company, which was Respondent No.2 in the claim petition, whereas First Appeal No.658/2010 is filed by the original claimant seeking enhancement in the amount of compensation as awarded by the Tribunal.

4) The aforesaid claim petition was filed by appellant in FA No.658/2010 seeking compensation from the owner and insurer of Minidor Auto rickshaw bearing registration No. MH-20/W-337 for the injuries caused to him in an accident happened on 5th March, 2005, having involvement of the aforesaid Minidor auto rickshaw.

. It was the contention of the appellant that the aforesaid accident had happened because of negligence on the part of driver of said auto rickshaw. The claim petition was resisted by the National Insurance Company, which has filed First Appeal No.490/2010. It was the contention of said insurance company before the Tribunal that the alleged accident had happened because of the composite negligence of driver of the Minidor auto rickshaw and the claimant Revanand Chaturvedi. When the accident had happened, claimant Revanand was proceeding from Jalna to Aurangabad on his motorcycle and was dashed by the said auto rickshaw. According to the contentions raised by the insurance company, the aforesaid accident was head on collision and for causing the said accident, motorcycle rider as well as driver of the said auto rickshaw were negligent in equal proportion. The further objection raised by the insurance company was as about percentage of permanent disability incurred by claimant Revanand.

5) The Tribunal, after having assessed the documentary and oral evidence brought before it, held claimant Revanand entitled for the compensation of Rs.3,88,924/- inclusive of NFL compensation jointly and severally from the driver, owner and insurer of the Minidor auto rickshaw. Thus, though the National Insurance Company has taken a plea of contributory negligence on the part of claimant Revanand, the learned Tribunal recorded a finding that the alleged accident happened because of the sole negligence on the part of the driver of the said Minidor auto rickshaw. Aggrieved by the finding

so recorded and the amount of compensation so awarded, the insurance company has filed the aforesaid appeal before this Court.

6) Claimant Revanand has also filed an appeal seeking enhancement in the amount of compensation awarded to him by the Tribunal.

7) Shri Kulkarni, learned Counsel appearing for the appellant – insurance company submitted that though there was sufficient evidence existing on record, evidencing that the alleged accident was head on collision and further that in occurrence of the alleged accident, negligence on the part of claimant Revanand was also the contributory factor, the Tribunal has erred in not holding the claimant Revanand negligent in occurrence of the alleged accident and has erroneously held the driver of the auto rickshaw solely responsible for causing the alleged accident.

. The learned Counsel took me through the description of the scene of occurrence, as is revealing from the spot panchanama, and submitted that from the locations of the vehicles, the only inference emerges that the alleged accident had happened because of the negligence on part of both; the motorcycle rider and the driver of the Minidor auto rickshaw. The learned Counsel, therefore, submitted that the impugned Award needs to be modified to the aforesaid extent and the claimant Revanand needs to be held equally responsible in occurrence of the alleged accident.

. In so far as quantum is concerned, the learned Counsel submitted that the Tribunal has solely relied upon the testimony of the claimant and has awarded the compensation on higher side. The learned Counsel further submitted that the disablement was not legally proved by the claimant and as such, no reliance could have been placed on the disability certificate placed on record by the claimant.

8) The learned Counsel appearing for the respondent i.e. Original claimant supported the impugned judgment and award. The learned Counsel submitted that the Tribunal has, in fact, awarded inadequate amount to the claimant.

9) After having considered the submissions advanced by the learned Counsel appearing for the respective parties and on perusal of the documents placed on record, apparently I do not see any reason to cause any interference in the impugned Award. Though it was vehemently argued by learned Counsel appearing for the insurance company that from the spot panchanama it could have been reasonably inferred by the tribunal that the alleged accident had happened because of the negligence on part of the drivers of both the vehicles. From the situations of the vehicles on the spot of occurrence, it is difficult to accept the submission so made by the learned Counsel. The Tribunal has correctly analysed the evidence on record and has held the driver of the Minidor

auto rickshaw solely responsible for occurrence of the alleged accident. From the material on record, it is difficult to accept the submission made by the learned Counsel appearing for the insurance company that alleged accident was head on collision. From the scene of occurrence, there is every reason to believe that the Minidor auto rickshaw possibly entered on a wrong side and gave dash to the motorcycle of the claimant Revanand. Secondly, if it was the contention of the insurance company that in causing the accident in question, claimant Revanand was equally responsible, the insurance company must have proved the said fact by leading a positive and cogent evidence there for. Admittedly, no such evidence was adduced by the appellant insurance company. I, therefore, do not see any merit in the submissions so made on behalf of the insurance company.

10) On careful reading of the impugned judgment and the other material on record, it

appears to me that the Tribunal has recorded a correct finding that the alleged accident had happened because of sole negligence on the part of driver of the Minidor auto rickshaw and no blame can be attributed on part of claimant Revanand.

11) In so far as quantum of compensation is concerned, the submissions made on behalf of the appellant insurance company are liable to be rejected at the threshold. The Tribunal has appropriately determined the amount of compensation payable to the claimant Revanand. In no case it can be said that the Tribunal has awarded exorbitant amount of compensation. Thus, there seems no substance in the appeal filed by the insurance company and the same deserves to be dismissed and it is accordingly dismissed, however, without any order as to costs.

12) In the appeal filed by the claimant, though it is the contention of the claimant that

the Tribunal has not determined the amount of compensation properly, the contention so raised has not been substantiated by him. While determining the amount of compensation, the Tribunal has properly considered the evidence brought on record and has accordingly determined the amount of compensation. No such material is placed on record by the claimant Revanand in support of his claim to enhance the amount of compensation. The appeal, therefore, fails and is accordingly dismissed.

13) The learned Counsel appearing for the original claimant submitted that the insurance company has deposited certain amount in this Court towards satisfaction of the impugned Award. The learned Counsel further submitted that out of the deposited amount, the claimant was permitted by this Court to withdraw a sum of Rs.1,00,000/- and the balance amount was directed to be kept in Fixed Deposit Receipt.

14) In view of the fact that the appeal filed by the insurance company has now been dismissed, the amount so deposited by it, shall be paid to the claimant along with the interest accrued thereon.

15) Both the appeals are dismissed with the aforesaid observations. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/