

admission stage.

2. Being aggrieved by the judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Parbhani, dated 27.07.2011 in MACP No. 102/2007, original respondent No.1 has preferred this appeal.

3. Brief facts giving rise to the present appeal are as follows:

i. On 19.03.2007, at about 14.30 hours, respondent No.1/original claimant, alongwith other teachers, was travelling in one auto rickshaw on Parbhani Basmat Road and at that time, one motorcycle bearing registration No. MH-22-J-8298 coming from Parbhani side gave dash to the said auto rickshaw. In consequence, the passengers travelling in the said auto rickshaw including respondent No.1/original claimant sustained injuries. Respondent No.1/original claimant was immediately shifted to the Hospital, where he was treaded as indoor patient and accordingly he incurred Rs.40,000/- on various counts, including medical expenses.

ii. Respondent No.1/original claimant has field

claim petition against the driver of the auto-rickshaw bearing registration No. MH-22-H-1113 as well as rider of the motorcycle. The learned Member of the Tribunal, by the impugned judgment and award dated 27.07.2011, partly allowed the claim petition and directed original respondent Nos. 1, 3 and 4 to pay an amount of Rs.1,10,000/- jointly and severally to the claimant alongwith interest @ 9% from the date of filing of petition till realization of the entire amount. Being aggrieved by the same, original respondent No.1/owner of the motorcycle involved in the accident, preferred this appeal.

4. Learned counsel for the appellant/owner of the motorcycle submits that the Tribunal has committed grave error while exonerating the Insurer/original respondent No.2. The learned counsel submits that the appellant was having learner's driving licence and his cousin was travelling with him at the time of accident as pillion rider on the said motorcycle. The learned counsel submits that respondent No.2 Insurer is thus, liable to satisfy the award passed against owner of the motorcycle which is insured by respondent No.2 Insurer.

5. Learned counsel for respondent No.2/Insurer of the motorcycle submits that the appellant was having learner's driving licence at the time of accident and as per police papers placed on record, he was riding the motorcycle alone. The learned counsel submits that there is clearcut breach of the terms and conditions of the Insurance policy and even the appellant has admitted that he was holding learner's driving licence at the time of accident.

6. The learned counsel further submits that the appeal is dismissed against respondent No.1 original claimant for want of steps and thus, the appeal itself is not tenable since no further steps are taken for restoration of appeal as against respondent No.1 claimant.

7. I have also heard learned counsel for respondent No.4.

8. Following points arise for my consideration and I have recorded my findings thereon for the reasons mentioned below:

Points	Findings
1) Whether the impugned judgment and : award calls for interference ?	In the negative.

2) What order ? : As per final order.

9. The appellant disowns the liability on two grounds. Firstly, it is the case of the appellant that he was not riding the motorcycle in rash and negligent manner at the time of accident and secondly, though he was having learner's driving licence at the time of accident, his cousin, who was having permanent driving licence, was pillion rider on the said motorcycle at the time of accident and the Tribunal has therefore erroneously exonerated the Insurer.

10. The accident had taken place on 19.03.2007 due to head on collusion between the motorcycle and the auto-rickshaw. On the basis of complaint lodged by the original claimant, Crime No.19/2007 came to be registered with the concerned police station. There is sufficient evidence by way of police papers on record to show that the accident had occurred due to head on collusion between the said two vehicles. I do not find any fault in the finding recorded by the Tribunal that the accident occurred due to rash and negligent driving of the rider of the motorcycle as well as driver of the auto rickshaw.

11. The appellant has examined himself on oath before the Tribunal. During the course of cross examination, he has admitted that he was holding learner's driving licence at the time of accident and after the accident, he had handed over the same to the Police. The said learner's driving licence is placed on record at Exhibit 78. However, the appellant has not pleaded in his written statement that at the time of accident, his cousin was accompanied him on the motorcycle. Even the appellant has not stated so before the Police when his statement came to be recorded. Furthermore, the appellant has also not examined his cousin to prove that the said cousin accompanied him on the motorcycle at the time of accident and that he was having permanent driving licence.

12. It appears that there is a clear breach of terms and conditions of the policy. The learned member of the Tribunal has therefore rightly exonerated the Insurer. Furthermore, the appellant has not taken steps as against respondent No.1/ original claimant against whom the appeal was dismissed as per order of this Court dated 16.07.2014 for want of steps. In view of this, there is no

substance in the appeal and the appeal is liable to be dismissed.

13. Accordingly I answered the points and proceed to pass following order:

O R D E R

i. Appeal is hereby dismissed.

ii. In the circumstances, there shall be no order as to costs.

iii. Civil application also stands disposed of.

(V. K. JADHAV, J.)

JPC