

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

**FIRST APPEAL NO. 1514 OF 2009
WITH
CIVIL APPLICATION NO. 7151 OF 2009
IN
CIRST APPEAL NO. 1514 OF 2009**

M/s New India Assurance Co. Ltd. ... Appellant
Having its registered and Head (Original
Office at 87, M.G. Road, New Respondent
India Asurance Building, No.2)
Fort, Mumbai 4001,
Branch Office at Parbhani and
Division Office at Dr. Rajendra
Prasad Road, Ajay Engg. Compound,
Aurangabad 431 005, through its
Senior Divisional manager.

VERSUS

- 1 Rauf Khan s/o Ibrahim Khan, ... Respondents
Age 45 years, Occu: Business &
Contractor
R/o Khadrabad Plot, Parbhani.
- 2 Javed Khan s/o Rauf Khan,
Aged 22 years, Occu: Business
R/o As above.

Mr. V. N. Upadhye, Advocate for the Appellant

Mrs.A. N. Ansari, Advocate for Respondent No.1

Mr. Mohammad Waseemulah, Advocate for Respondent No.2.

CORAM : K. L. WADANE, J.

RESERVED ON : 07.08.2017

PRONOUNCED ON : 09.08.2017

J U D G M E N T:

1. The instant appeal arises out of judgment and
award passed by the Chairman, Motor Accident Claims
Tribunal, Parbhani in Motor Accident Claim Petition No.

374 of 2007, dated 17.04.2009, by which, the learned Chairman allowed the claim petition under section 166 of the Motor Vehicles Act and awarded compensation of Rs.76,000/- alongwith 6% interest from the date of petition till its realization. Hence, the original respondent No.2 presented this appeal.

2. Brief facts of the case may stated as follows:

- i. Respondent No.1 /original petitioner filed application claiming compensation of Rs.1,50,000/- from the owner and insurer of the offending Jeep bearing registration No. MH-22-H-74. The said Jeep was driven by one Yunus Khan in rash and negligent manner. On 04.12.2005, at about 10.00 a.m., when the jeep came near Bhankheda on Yeldari Shengaon Road, at that time, driver of the vehicle lost control over the jeep and gave dash to the road side tree. In the accident, respondent No.1/ original petitioner sustained fracture injury to his left leg and other injuries. The accident occurred due to rash and negligent driving of jeep by its driver. After the accident, the petitioner was admitted in Navandar Hospital at Parbhani. His condition was serious and therefore he could

not lodge report immediately to the concerned police station. He was indoor patient from 04.12.2005 to 13.05.2005. Thereafter he was under medical treatment as outdoor patient. He submitted the report of the accident on 07.02.2006.

ii. The present appellant i.e. the original respondent No.2 Insurer resisted the claim petition and denied almost all allegations about occurrence of the accident. It has denied permanent disability and rash and negligent driving of the vehicle by its driver. It is specifically contended that accident occurred on 04.12.2005, whereas the report was submitted to the police on 07.02.2006. It shows that the claim of the petitioner is false. It is further contended that the petition was filed in collusion with respondent No.1. With these allegations, the appellant /original respondent No.2 prayed to dismiss the claim petition.

iii. In order to establish the claim of compensation, the petitioner himself entered into witness box. In addition his oral evidence, he examined PW-2 Shaikh Pasha, one of the occupants in the Jeep and PW-3 Dr. Navandar with whom he was under medical

treatment. Respondent No.1/ original petitioner also relied upon the MLC Certificate Exh. 49, Disability Certificate Exh. 50, Accident Register Exh. 35, Discharge Card Exh. 37, charge sheet Exh. 46 and statement of witness Shaikh Pasha before Police at Exh. 47.

3. I have heard the arguments of Mr. V. N. Upadhye, learned counsel for the appellant, Mrs. A. N. Ansari, learned counsel for Respondent No.1 and Mr. Mohammad Waseemulah, learned counsel for Respondent No.2.

4. Mr. Upadhye, the learned counsel for the appellant argued the appeal on the following points:

i. Copy of the first information report is not exhibited and therefore cannot be read in evidence.

ii. No name of the petitioner/ respondent No.1 is mentioned in any of the police papers including statement of the witnesses.

iii. Dr. Navandar did not inform the police about admission of the petitioner in his Hospital.

iv. In view of the terms and conditions of the

policy, risk of the petitioner is not covered.

5. As against this, Mrs. Ansari, the learned counsel for the respondent No.1/original petitioner argued that evidence of the petitioner and the witness Shaikh Pasha is very much clear to establish that on the date and time of the accident, respondent No.1/petitioner was travelling in the offending jeep.

6. Considering the rival submissions of the parties, following points arise for my consideration.

	Points	Findings
1	Whether respondent No.1/original petitioner proved that he sustained grievous injuries caused due to motor vehicle accident which took place on 04.12.2005 on Risod to Parbhani Road.	Yes
2	What order ?	Appeal is dismissed.

7. I have perused the oral evidence of the above witnesses. The petitioner/original respondent no.1 deposed that on 04.12.2005, he himself and his children were going from Risod to Parbhani for attending function of his daughter in TATA Sumo Jeep No. MH-22/H-74. Jeep was driven by the Driver Yunus

Khan. He was driving the vehicle in very high speed. At about 10.00 a.m., driver could not control the said jeep due to high speed and gave dash to the road side tree. In the accident, he sustained injury and therefore, he was taken to the Private Hospital of Dr. Navandar at Parbhani.

8. Looking to the oral evidence of next witness Shaikh Pasha, it appears that he also deposed as per the oral testimony of the petitioner.

9. From the evidence of Dr. Navandar, it appears that Dr. Navandar gave necessary medical treatment to the petitioner. He further deposed that the petitioner was admitted in the Hospital on 04.12.2005 at 4.00 p.m. On his admission, this witness/Dr. found injuries- 'Central fracture dislocation' to hip joint. He also issued MLC (Exh.49) and disability certificate Exh. 50. On perusal of his further evidence, it appears that he has recorded history of the patient at the time of admission. MLC Exh.49 shows that the respondent No.1/petitioner was admitted in the Navandar Hospital on 04.12.2005 at about 4.00 p.m. with history of road traffic accident. This witness Dr. Navandar has clarified that he did not inform to the police about

the accidental admission of the petitioner on the same day because the petitioner told him that he already reported the matter to the concerned police and therefore, he did not inform the police. Reason about non disclosure of the accident to the police by this witness is clearly explained and it has come in cross examination of this witness.

10. The learned counsel for the appellant Insurance Company is harping on the point that there is no evidence on record to show that in fact the respondent No.1/ petitioner was travelling in the jeep. In this behalf, it is material to make a reference to the original evidence of PW-2 Shaikh Pasha coupled with his statement before the police at Exh.47. In his statement, witness Shaikh Pasha has specifically mentioned that on 04.12.2005, the petitioner, along with his children were proceeding to Risod from Parbhani in a Jeep No. MH-22/H-74. It is further mentioned that the vehicle met with an accident and struck to the road side tree, in which petitioner/ respondent No.1 sustained grievous injury. So, from the record, it is very much clear that the petitioner was travelling in the jeep.

11. One another document is also produced on record at Exh.46, i.e. copy of charge-sheet, wherein, it is mentioned that in the accident, the injury was caused to the complainant at his leg and in the earlier paragraphs, name of complainant is written as Rouf Khan Ibrahim Khan i.e. the present respondent no.1. Particulars are given, in which, the name of the complainant and other persons are mentioned as witnesses, date, place and time of accident is also mentioned.

12. One another important document is to be referred i.e. Accident Register No.03/2005. Its certified copy is at Exh. 35. From the contents of the the same, it is crystal clear that the accident was reported on the same day i.e. on 04.12.2005 to the concerned police station. Therefore, filing of the complaint at latter stage has no importance, since the accident was promptly reported by the driver of the jeep to the concerned police. From other papers i.e. statement witness, it is clear that at the relevant time of accident, respondent no.1/ original petitioner was travelling in the offending jeep, in which he has sustained grievous injuries, due to which he is permanently disabled to the extent of 15%. Hence point

No.1 is answered accordingly.

13. Looking to the reasons recorded by learned Chairman, Motor Accident Claims Tribunal, the learned Chairman has taken into consideration the evidence on record properly and has rightly awarded the amount of compensation. In view of the above, there is no substance in the appeal. Therefore, the appeal is liable to be dismissed and accordingly it is dismissed. No order order as to costs.

14. In view of disposal of the appeal, pending civil application also stands disposed of.

(K. L. WADANE, J.)

After pronouncement of the judgment, Mrs. Ansari, learned counsel appearing for respondent No.1 submits that at the time of presentation of the appeal, the Appellant/Insurance Company has deposited certain amount of compensation in this court. Therefore, respondent No.1 is permitted to withdraw the amount of compensation and statutory amount deposited in this court alongwith interest accrued thereon.

(K. L. WADANE, J.)

JPC