

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

FIRST APPEAL NO. 335 OF 2017

NEW INDIA INSURANCE CO. LTD.
VERSUS
LATABAI GOPINATH BHAGAT AND OTHERS

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Advocate for Appellant : Mr Chapalgaonkar S.
Advocate for Respondents : Mr Choudhari Sushant B.

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CORAM : V.K. JADHAV, J.
Dated: June 20, 2017

PER COURT :-

1. Being aggrieved by the order passed below Exh.5 in MACP No.355/2014, original respondent no.3-insurer has preferred this appeal.

2. Brief facts, giving rise to the present appeal are as follows :-

a] On 26.9.2014 at about 07.00 p.m. deceased Gopinath alongwith one Bhausahab was going by Ashti to Daithan Road on motorcycle. According to the claimants, on way, within the limits of village Kohini one car bearing registration No.MH-23/Y-661 coming from the opposite direction gave dash to the motorcycle. In consequence of which, deceased Gopinath sustained

injuries. He was immediately shifted to Hospital where he was declared dead on arrival. The legal representatives of the claimants approached the Tribunal by filing MACP No.355/2014 for grant of compensation under various heads on fault liability and also filed Exh.5 application for grant of compensation under 'No fault Liability.' Hence, this appeal.

2. The learned counsel for the appellant-insurer submits that, there is delay of 4 days in lodging the complaint in the concerned police station and even on perusal of the contents of the FIR/complaint, it appears that the informant had no first hand knowledge about the accident in question. Learned counsel submits that, the claimants and respondent-owner driver are hailing from the same village and the appellant-insurer has raised a specific defence about collusion between the claimants and respondent for claiming the compensation against the appellant-insurer. The learned counsel submits that the Tribunal has not considered the same and awarded the compensation

under no fault liability.

3. Learned counsel for respondents-claimants submits that though the informant had no first hand knowledge about the accident, on perusal of the contents of the FIR, it appears that said informant had not only given the details as registration number of the vehicle involved in the accident, but also given the details as to who was driving the vehicle at the time of the said accident. Learned counsel submits that, after due investigation police submitted charge sheet against the person named as driver in the said FIR. Learned counsel submits that, in case of accidental death four days delay in lodging the complaint is not fatal and the Tribunal after considering the prima facie evidence on record rightly awarded the compensation under no fault liability. No interference is required.

4. On perusal of the impugned order passed by the Tribunal, it appears that the Tribunal has considered prima facie the documents produced on record. The

Tribunal has also considered that, the respondent owner and driver have not denied happening of the accident. Though there is four days delay in lodging the FIR, it further appears from the contents of the FIR that, the informant had given all necessary details such as registration number of the vehicle involved in the accident and the person who was driving the said vehicle at the time of accident. I do not find any fault in the order passed by the Tribunal. The appellant-insurer can raise all the possible defences in the main claim petition on fault liability. Hence, following order.

O R D E R

1. Appeal is hereby dismissed. No costs.
2. All points kept open.
3. Appeal is accordingly disposed of.
4. Respondents-claimants are hereby permitted to withdraw the compensation amount, if deposited by the appellant-insurer before this Court.

(V.K. JADHAV, J.)

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