

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT NAGPUR**

FIRST APPEAL NO.1216 OF 2016
WITH
CIVIL APPLICATION NO.3954 OF 2016

The Oriental Insurance Co.Ltd.,
Akola, through its T.P. Hub
Incharge, A.D. Complex,
Mount road Extension, Sadar,
Nagpur

..Appellant

Versus

1. Abhay Hanumantrao Kulkarni,
Aged about 42 years,
Occu. Service, At present nil,
r/o Khetan Naga, Kaulkhed,
Akola, Tah. & Dist.Akola
2. Hidayatali Sayyed s/o Fayyazali
Sayyad, Aged about 52 years
Occu. Truck Driver, R/o Dr. Zakir
Hussain Ward, Ganesh Furniture,
Ballarpur,Tah. Ballarpur,
District Chandrapur
3. Smt.Vaishnavi Sanjay Kotapalliwar,
Adult, occu. Onwer of the truck,
R/o Ganjwad, Tah.& Dist.Chandrapur
4. Mrs Lalita Kailashchandra Gupta,
Aged adult, Occu. Business,
R/o 31, C.A. Road, Dosar Bhavan
Chowk, Petrol Pump, Bajerla,
Nagpur, District Nagpur
5. The Branch Manager,
Reliance General Insurance Co.Ltd.,
6th Floor, Landmark building,
Wardha road, Nagpur

.. Respondents

Mr A.V. Joshi, Advocate for appellant
Mr H.R. Gadhia, Advocate for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 5th May 2017

PER COURT

1. This appeal is under the provisions of Section 173 of the Motor Vehicles Act by original respondent no.3 – Insurance Company with whom the offending vehicle was insured. The claim petition is based on the accident dated 7th August 2008, when the claimant was travelling in a mini door auto, which was hit by the truck bearing registration no.MH-34-A-5444, which was driven by the original non-applicant no.1 in a rash and negligent manner.

2. The claimant sustained 80% permanent disability and as such, lodged claim for compensation based on his monthly salary of Rs. 8,000/-. The total claim was to the tune of Rs.8,500/-. The total claim was to the tune of about Rs.30,00,000/-.

3. Based on the claim put forth, the present appellant-Insurance Company lodged its objection vide reply at Exh.13 and claimed that it is the mini door auto in which the claimant was travelling was at fault, as the said vehicle was driven in a rash and negligent manner, whereas the offending vehicle was at moderate speed.

4. The offence came to be registered against the non-applicant no. 1, i.e. driver of the offending vehicle, punishable under Sections 279, 337, 338, 427, 304-A of the Indian Penal Code and Section 184 of the Motor Vehicles Act in which he came to be acquitted.

5. The appellant thereafter claimed that even if it is presumed that the driver of the mini door auto was not at fault and it is the driver of

the offending vehicle, which was at fault, still the theory of contributory negligence needs to be accepted.

6. Based on the same, issues were framed at Exh.45 and in support of the claim, the claimant examined himself along with Dr.Abhijeet, who was member of the medical board constituted at Government General Hospital, Akola who has certified 80% disability. The nature of disability as is brought on record speaks of "Paraplegia" and 100% loss of earning is inferred. The tribunal then proceeded to award compensation of Rs.22,30,000/-.

7. Learned Counsel for the Insurance Company i.e. appellant herein though would urge that no findings are recorded on the issue of contributory negligence and the Doctor who has treated the claimant was not examined, however, upon analysis of the evidence and the pleadings brought before this Court, what could be inferred is the occurrence of the accident is very much proved, particularly as regards the fault on the part of the original non-applicant no.1. i.e. the driver of the offending truck by placing on record the relevant document viz. first information report at Exh.17 and the other papers in C.R.No.194 of 2008 referred supra.

8. Upon analysis of the oral evidence in the backdrop of above referred documents, the conclusion that was drawn that the offending vehicle i.e. truck in question has hit the mini door auto and as such, it is the driver of the said vehicle, who was negligent appears to be a proper finding of facts based on the material available on record.

9. Dr. Abhijeet who is examined by the claimant in support of the injury that was suffered by him and to establish that there is 100% loss of earning, was examined at Exh.80. Dr. Abhijeet, in his evidence has stated that the claimant has suffered 80% disability and the nature of injury as "Paraplegia", which results into complete loss of power of both the lower limbs) has driven this Court to draw only conclusion that there is 100% loss of earning.

10. In the backdrop of above, the award of compensation, in my opinion, appears to be just and reasonable. No interference is warranted. As such, appeal fails, stands dismissed.

11. In view of dismissal of appeal, Civil Application for stay does not survive as such, stands disposed of.

(N.W. SAMBRE, J.)

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