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

FIRST APPEAL NO.1506 OF 2009

The New India Assurance Company Ltd.,
a subsidiary of the General Insurance
Corporation of India and a company
Incorporated under the Companies Act
Having one of its Divisional Office at
Adalat Road, Aurangabad
Through its Senior Divisional Manager
Shri Vishwas S/o Bansi Gayakwad,
Age : 52 years, Occu : Service at
The New India Assurance Co.
D.O. No.1 Adalat Road, Aurangabad .. Appellant
(Orig. Resp. No.2)

Versus

1. Abdul Sadek Abdul Latif (Died)
Through L.R.s

1-A. Sk. Amir s/o. Abdul Sadik
Age : 21 yrs, Occu : Labour

1-B. Sk. Naziya d/o. Abdul Sadik
Age : 22 yrs, Occu : Household,

1-C. Sk. Sohel s/o Abdul Sadik
Age : 17 yrs, Occu : Minor Student

1-D. Sk. Samiin D/o Abdul Sadik
Age : 15 yrs, Occu : Student

1-E. Shamin Begum w/o Abdul Sadik
Age : 40 yrs, Occu : Household

All r/o. Mominpura, Mamla at Beed,
Tq. & Dist. Beed.

2. Geeta w/o Durgaprasad Gupta
Age : Major, Occu : Truck Owner

r/o K56/87-A, Usanganj, Cantonment
Waranasi (U.P.) .. Respondents
(Respdt No.1 – Orig. Clamant
Respt No.2 : Orig. Respt No.1)

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Advocate for Appellant : Shri Ajit Kadethankar
Advocate for Respondents No.1-A to 1-E : Shri Abdul Aziz
Advocate for Respondent No.2 : Shri Y.B. Pathan

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CORAM : P.R. BORA, J.
Dated: March 05, 2019

ORAL JUDGMENT :-

1. The Judgment and Award passed in Motor Accident Claim Petition No.89 of 2005 passed by Motor Accident Claims Tribunal at Beed on 09.03.2009, is questioned in the present appeal by the Insurance Company.

2. Present respondent no.1 had preferred the aforesaid claim petition claiming compensation for the injuries caused to him in the vehicular accident happened on 12.12.2002 having involvement of a ST Bus and truck bearing registration no.UP-65-R-0440, owned by the present respondent no.2 and insured with the appellant – Insurance Company. It was the contention of respondent no.1, who is hereinafter referred to as the claimant, that the alleged accident happened because of the sole negligence on part of the driver of the offending truck. As per the averments in the petition,

the claimant had incurred 9% permanent disability because of the injuries caused to him in the alleged accident. The claimant had claimed the compensation of Rs.1,50,000/- towards the medical expenses and for the permanent disability incurred by him. The claim was resisted by the appellant – Insurance Company on various grounds by filing a detailed written-statement in that regard. The claimant testified before the Court and filed on record the documents pertaining to the medical expenses as well as the police papers pertaining to the accident in question. No evidence was adduced on behalf of the Insurance Company. The Tribunal, after having assessed the oral and documentary evidence brought on record before it, held the claimant entitled for the total compensation of Rs.75,000/- inclusive of the NFL compensation. Aggrieved by, the Insurance Company has preferred the present appeal.

3. Heard Shri Kadethankar, learned Counsel appearing for the appellant – Insurance Company. The learned Counsel submitted that, the impugned Judgment and Award is challenged by the Insurance Company on three grounds. First ground raised by the Insurance Company is that, the Tribunal has wrongly relied upon the disability certificate though the issuing authority was not examined before the Tribunal. The second objection raised by the Insurance

Company is as about the driving licence of the driver of the offending truck. According to it, the driving licence which was produced before the police was a fake driving licence and the driver of the offending truck, in fact, was not holding any driving licence on the date of accident. Third objection was that, the driver of the ST bus and ST Corporation both were necessary parties in the petition and the petition filed was liable to be dismissed for non-joinder of necessary parties. The learned Counsel, therefore, prayed for allowing the appeal and set aside the impugned Judgment and Award.

4. Learned Counsel Shri Aziz appearing for the respondent - claimants supported the impugned Judgment and Award. The learned Counsel submitted that, the certificate was issued by the Government Orthopedic Board and as such, it was not necessary on part of the claimant to examine the signatories to the said certificate. The learned Counsel further submitted that, merely a letter was produced on record by the Insurance Company contending that, the driving licence produced in the matter was a fake driving licence, but the said authority was not examined before the Court. The learned Counsel further submitted that, in connection with the alleged accident, the police have prosecuted the driver of the offending truck and according to the claimant also, the entire negligence was of the

driver of the truck. In the circumstances, it was not necessary on his part to make the driver of the ST Bus and ST Corporation as a party respondent. The learned Counsel, therefore, prayed for dismissal of the appeal.

5. After having considered the submissions made by the learned Counsel appearing for the respective parties and on perusal of the impugned Judgment and evidence on record, apparently, it is revealed that, the grounds as are raised by the Insurance Company in exception to the impugned Judgment are unsustainable. It was rightly submitted by learned Counsel for the claimant that, when the certificate was produced under the signatures of members of the Government Orthopedic Board, it has got some evidentiary value and it was not necessary to examine the author of the said certificate. From the record, it is further quite evident that, no contrary evidence is placed on record so as to disbelieve the said certificate. The Second objection raised by the Insurance Company also does not carry any much substance since as has been rightly observed by the Tribunal, mere placing on record the letter received from the investigator appointed by the Insurance Company contending that in his investigation, it was noticed that, the driving licence was fake, was not enough. The Insurance Company must have adduced the

oral evidence of the said person and must have produced certain additional evidence in support of the said contention. Admittedly, no such evidence was produced on record. It is further revealed that, in the written statement, there was no such specific pleading and the Tribunal has therefore rightly rejected the said objection. Insofar as the objection raised as about the non-joinder of necessary parties is concerned, the said objection is liable to be rejected at the threshold in view of the fact that, the prosecution was only against the driver of the truck and not against the driver of the ST Bus and secondly it was the choice of the claimant, as to against whom, to proceed. Even if it is held that, the negligence was on part of drivers of both the vehicles, any of the tort feasor was liable to be prosecuted by the claimant. Having considered the facts as aforesaid, it does not appear to me that, any indulgence is required in the impugned judgment and award. The appeal being devoid of any substance, deserves to be dismissed and is accordingly dismissed.

6. The amount of compensation, if any, deposited by the appellant – Insurance Company is permitted to be withdrawn by respondent no.1 i.e. original claimant along with the interest accrued thereon.

7. Pending Civil Application, if any, stands disposed of.

(P.R. BORA, J.)

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