

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 709 OF 2001

The New India Assurance Co. Ltd. ..Appellant
v/s.
Mrs. Suchita Santosh Rane and Ors. ..Respondents

Mr.Devendranath S. Joshi for the Appellant.
Mrs.Shraddha Chheda I/b Navdeep Vora & Associates for the
Respondent No.3.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 28th AUGUST, 2019.**

P.C.

1 The Appellant-Insurance Company has challenged the
Judgment and Award dated 22/01/2001 passed by the learned
Member, MACT, Mumbai in Application No. 959 of 1995.

2 The respondent no.1 was the claimant in claim petition
u/sec. 166 of the Motor Vehicle Act. The brief facts leading to filing
of the claim petition are that on 06/02/1995, the respondent no.1
was travelling by auto-rickshaw bearing No. MMV-3885 collided

with a BEST Bus bearing No. MMK-2117, due to which respondent no.1-claimant sustained grievous injuries. The auto-rickshaw is said to have been driven in a rash and negligent manner. Respondent no.1, therefore, claimed total compensation of Rs.4,00,000/- from the respondent no.2-owner of the auto-rickshaw, the appellant-Insurance Company and also from the Municipal Corporation, Greater Mumbai, the owner of the BEST Bus.

3 The respondent no.2 did not contest the proceedings. The appellant-Insurance Company contested the proceeding mainly on the ground that the accident was caused due to rash and negligent driving by the driver of the BEST bus.

4 The respondent no.3- Municipal Corporation, Greater Mumbai claimed that there was no negligence on the part of the driver of the bus. The respondent no.3-Corporation disputed its liability that the accident was caused due to rash and negligent driving by the driver of the auto-rickshaw.

5 Upon considering the evidence on record, the Tribunal held that the accident was caused due to rash and negligent driving by the driver of the auto-rickshaw . Considering the nature of the injuries sustained by the respondent no.1, the Tribunal awarded compensation of Rs.1,75,776/- with interest at the rate of 9% per annum from 01/01/1998 till realization.

6 Though the appellant-Insurance Company has raised several grounds, in the course of the hearing, the Learned Counsel for the appellant has stated that the challenge is restricted only to the issue of negligence. Hence, the only question for consideration is, whether the accident was caused due to the rash and negligent driving by the driver of the auto-rickshaw.

7 In this regard, respondent no.1 (AW-1) had deposed that the accident was caused solely due to rash and negligent driving by the driver of the auto-rickshaw. The records also indicate that the crime was registered against the driver of the auto-rickshaw for driving the vehicle in a rash and negligent manner. The appellant-

Insurance Company has not examined the driver of the auto-rickshaw or any other witness to prove that the driver of the bus has driven the bus in a rash and negligent manner or contributed to the accident in any manner. Under these circumstances, the learned Member of the Tribunal has rightly come to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the auto-rickshaw. Hence, the appellant-Insurance Company being the insurer of the offending vehicle cannot be exonerated of its liability. The appeal is devoid of merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)