

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

FIRST APPEAL NO.287 OF 2007

Dr Sunil s/o Prabhakar Pathak, Akola

-vs-

Omprakash s/o Motilal Tiwari, Mumbai and ors.

WITH

FIRST APPEAL NO.305 OF 2009

National Insurance Co. Ltd.

-vs-

Dr Sunil s/o Prabhakar Pathak, Akola and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms P. M. Chandekar, Advocate for appellant in FA
No.287/2007 and for respondent No.1 in FA
No.305/2009 .

Shri D. N. Kukday, Advocate for respondent No.3/
Insurance Company in FA No.287/2007 and for
appellant in FA No.305/2009.

CORAM : A.S.CHANDURKAR, J.

DATE : March 07, 2019

Both these appeals arise out of the adjudication by the Motor Accident Claims Tribunal, Akola in M.A.C.P. No.56/2002. While the appellant in F.A. No.305/2009 has challenged that adjudication, the claimant in F.A. No.287/2007 seeks enhancement in the amount of compensation.

2. When the appeals were taken up for hearing the appellant in F.A. No.287/2007 moved Civil Application No.972/2019 under provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908. By that application the appellant sought permission to produce on

record additional evidence in the form of various documents indicating medical treatment taken by the appellant from the year 2007 to 2018. Along with the application various medical bills and certificates have been placed on record.

Reply has been filed by the insurer opposing the prayer made in Civil Application. It has been stated that the certificate as well as the medical bills sought to be placed on record have no relation with the ailments suffered by the claimant as a result of the accident in question. It is further stated that these documents have been filed belatedly and cannot be taken into consideration by way of additional evidence. In that regard the learned counsel for the insurer has placed reliance on the decision in *Uttaradi Mutt vs. Raghavendra Swamy Mutt AIR 2018 SC 4796*.

3. On hearing the learned counsel for the parties it is seen that the claim petition arises from the accident that occurred on 22/01/2000 in which accident the claimant suffered various injuries. The claim petition was adjudicated on 18/10/2006 after which the present appeals were filed. Considering the nature of documentary material available on record and keeping in view the provisions of Order XLI Rule 28 of the Code, the interests of justice would be served by issuing the following directions :

- (i) By keeping the present appeals pending in this Court the claimant is granted liberty to lead evidence in terms of Civil Application No.972/2019 before the Claims Tribunal at Akola. It would be open for the claimant to examine himself and such other witnesses in support of those documents. Similarly, the insurer would be at liberty to rebut that evidence which would be brought on record by the claimant. It would also be

open for the insurer to lead such evidence to indicate absence of any connection between the ailments suffered by the claimant and the accident in question. This exercise be completed within period of three months from 01/04/2019 on which date the parties shall appear before the Claims Tribunal at Akola.

(ii) The records and proceedings be sent to the Claims Tribunal which shall thereafter be returned after the aforesaid exercise is completed. Needless to state the appeals would be heard after the additional evidence is recorded and remitted by the Claims Tribunal to this Court. It is clarified that the aspect of admissibility as well as the evidenciary value of the documents sought to be relied upon is kept open for being considered in the appeals. Order accordingly.

The Civil Application is disposed of in aforesaid terms.

JUDGE