

1

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

FIRST APPEAL NO.711 OF 2009

AND

FIRST APPEAL NO.717 OF 2009

FIRST APPEAL NO.711 OF 2009

The New India Assurance Company Limited,
Through its Divisional Manager, Walcut Compound,
Amravati, presently through its Chief Regional
Manager, 4th Floor, Dr.Ambedkar Bhawan, M.E.C.L.
Premises, Seminary Hills, Nagpur. **Appellant.**

:: V E R S U S ::

1. Pandurang s/o Vithobaji Samrutwar, aged
about 45 years, resident of Takli (Vrindawan),
Taluka Kelapur, district Yavatmal.

2. Dilip s/o Rajaramji Nagrale, aged major,
resident of ward No.5, Ralegaon, district
Yavatmal. **Respondents.**

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Ms Anita Mategaonkar, Counsel for the Appellant.

Shri Bharat Vora, Counsel for Respondent No.1.

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FIRST APPEAL NO.717 OF 2009

The New India Assurance Company Limited, through its
Divisional Manager, Walcut Compound, Amravati,
presently through its Chief Regional Manager,
4th Floor, Dr.Ambedkar Bhawan, M.E.C.L. Premises,
Seminary Hills, Nagpur. **Appellant.**

:: VERSUS ::

1. Shankar s/o Ganpat Buddewar, aged about 45 years, resident of Takli (Vrindawan), Tahsil Kelapur, district Yavatmal.

2. Dilip s/o Rajaramji Nagrale, aged major, resident of ward No.5, Ralegaon, district Yavatmal.

..... **Respondents.**

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Ms Anita Mategaonkar, Counsel for the Appellant.
Shri Bharat Vora, Counsel for Respondent No.1.

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CORAM : V.M.DESHPANDE, J.
DATE : OCTOBER 26, 2021

COMMON JUDGMENT

1. These two appeals arise out of same accident that took place on 23.4.2002 at about 1:15 a.m. on Kalamb Wardha Road within jurisdiction of Kalamb Police Station. Respondent No.1 in these two appeals suffered injuries in the said accident. Along with them, a co-passenger by name Shobha w/o Mohan Badadewar lost her life. The said accident gives rise to three different claim petitions under the Motor Accident Claims Tribunal at Yavatmal (hereinafter referred to as, “the Tribunal” for the sake of brevity). Husband of the deceased Mohan filed a claim petition

3

along with his a minor son and it was registered as Claim Petition No.227/2002; respondent No.1 Pandurang, the injured, in First Appeal No.711/2009, filed a claim petition and it was registered as Claim Petition No.42/2003, and respondent No.1 Shankar, the injured, in First Appeal No.717/2009, filed a claim petition and it was registered as Claim Petition No.43/2003. These three claim petitions came to be decided by learned Chairman of the Tribunal by common judgment on 7.11.2008. All three claim petitions came to be partly allowed.

2. Being aggrieved by the common judgment, the appellant/The New India Assurance Company Limited (for short, “the Insurance Company”) filed these two appeals. By filing First Appeal No.711/2009, the Insurance Company is challenging the judgment and award in Claim Petition No.42/2003, whereas by filing First Appeal No.717/2009, the Insurance Company is challenging the judgment and award in Claim Petition No.43/2003.

3. Since appeals arise out of the same accident and arise

4

out of the same common judgment, these appeals were heard simultaneously and they are decided by this common judgment.

4. I have heard learned counsel Ms Anita Mategaonkar for the appellant/the Insurance Company and learned counsel Shri Bharat Vora for respondent No.1, who will be referred to as claimants in this common judgment. Both learned counsel vehemently made their respective submissions to support their briefs. With their able assistance, I have gone through the impugned judgment and award.

5. It is contention of learned counsel for the Insurance Company that the Insurance Company ought to have been absolved by the Tribunal because of breach of policy inasmuch as according to the Insurance Company, passengers travelling in ill-fated jeep were passengers for fare. It is also another contention of learned counsel that there were passengers exceeding 10 in numbers, that is also another breach. Learned counsel, therefore, submitted that the Tribunal ought not to have granted compensation to injured persons.

5

6. *Per contra*, learned counsel for claimants supported the judgment and reasoning supplemented by learned Chairman of the Tribunal and he prayed for dismissal of appeals.

7. It is not in dispute that on 23.4.2002 an accident took place near Kalamb Wardha Road at around 1:15 a.m.. It is also not in dispute that in the said accident one Shobha lost her life. It is also not in dispute that injured persons were travelling in ill-fated jeep having registration No.MH-29/F/352 and it was rashly driven by Vinod Madhukar Amate who is not respondent in these appeals.

8. According to injured Pandurang, he sustained fractures below and above right eye and he was brought initially to the Government Medical College at Yavatmal and, thereafter, he was referred to CHMS Hospital at Nagpur and he was injured patient for about 20-21 days. Referral letter issued by the Government Medical College at Yavatmal is at Exhibit-51 and discharge summary issued by CHMS Hospital at Nagpur is at Exhibit-52. Pandurang, also filed discharge card issued by Dr.Salpekar and the said is at Exhibit-53 which indicates that he

6

was admitted in private hospital for urinal problem and advised for operation. It is not in dispute at all before this Court that Pandurang sustained depressed fracture to zygoma right side, depressed fracture to face, multiple fractures to chest ribs, right scapula with long contusion and other various injuries. Pandurang claimed that he suffered 42% permanent disability. For the said, he produced on record disability certificate of Dr.Dabhere. Learned Chairman of the Tribunal noticed that extent of disability is not proved conclusively because of non-examination of the said doctor. However, learned Chairman of the Tribunal recorded a finding that Pandurang suffered disability to the extent of 30% in view of discharge card issued by the Government Hospital at Yavatmal. I see no reason not to concur with reasoning given by learned Chairman of the Tribunal. Further, even before this Court it was not at all challenged that Pandurang did not suffer fracture injuries.

9. According to injured Shankar, he sustained fracture to ribs and head injuries. He was admitted in the Government

7

Medical College at Yavatmal for two days. His discharge card (Exhibit-56) issued by the Government Medical College at Yavatmal confirmed evidence of Shankar that he sustained head injuries. Shankar has also produced permanent disability certificate issued by Dr.Dabhere showing that he suffered 26% permanent disability. However, the said doctor is not examined. Learned Chairman of the Tribunal found that evidence was not seriously challenged at all when he was cross-examined in respect of injuries coupled with the fact that discharge certificate (Exhibit-56) shows that Shankar suffered head injuries. No different view can be taken than the view taken by learned Chairman of the Tribunal insofar as Shankar is concerned that he has suffered 10% disability.

10. It is also not in dispute that injured Pandurang and Shankar are agriculturists by their profession and at the time of the accident their age was 45 years. According to injured Pandurang, he was earning Rs.7000/- per month. No documentary evidence was produced before Court below to substantiate the said claim.

8

However, in his cross-examination it is brought on record that he owns a land though dry crop land. In this view of the matter, no exception can be taken to finding recorded by learned Chairman of the Tribunal that annual income of Pandurang must be at Rs.15000/- per month.

11. Similarly, learned Chairman of the Tribunal also reached to conclusion that early income of injured Shankar must be at Rs.15000/- per month and I see no reason to take a different view after going through the entire record.

12. Learned Chairman of the Tribunal, looking to age 45 years of injured Pandurang and injured Shankar, applied multiplier of 15. In my view, no exception can be taken to that finding also in view of law laid down by the Honourable Apex Court in the case of Smt.Sarla Verma and ors vs. Delhi Transport Corporation and anr reported at AIR 2009 (Vol.96) SC 3104.

13. Now, coming to contention put forth by the Insurance Company that there was a breach of policy, it is not in dispute that on the day of the accident motor vehicle i.e. Mahindra and

9

Mahindra Jeep having registration No.MH-29/F/352 was duly insured with the Insurance Company. Exhibit-38, Insurance Policy shows that it was for 9+1 passengers. According to the Insurance Company, more than 15 passengers were travelling in the Jeep and, therefore, there is a breach of conditions of the policy. Another contention of the Insurance Company is that injured persons were passengers for fare. In view of these two specific contentions, burden was on the Insurance Company to prove that there were more than 10 passengers in the ill-fated Jeep at the time of the accident and injured persons boarded on the said Jeep as passengers for fare. Surprisingly, nobody on behalf of the Insurance Company entered into witness box to substantiate its claim. Further, cross-examinations of injured persons show that nothing could be brought on record to show that there were more passengers than the limit as stated in the Insurance Policy. Evidences of injured persons specifically state that they did not pay any fare. Further, in the impugned judgment, learned Chairman of the Tribunal recorded finding that Insurance Policy (Exhibit-38) clearly indicates that extra premium of Rs.500/- was paid to cover

10

risk of 10 unnamed passengers. Nothing could be pointed out before this Court to challenge the said finding.

14. Evidences injured Pandurang and Shankar show that they were to attend engagement ceremony of nephew of Pandurang who is also related to deceased Shobha and they did not pay any amount as fare. In view of this, there is no other option than to reject the contention raised by the Insurance Company and accordingly the contention in that behalf made on behalf of the Insurance Company stands rejected.

15. Insofar as quantum is concerned, there is no challenge by the Insurance Company. Similarly, there is no cross appeal filed by claimants/injured that less compensation was given to them. Resultantly, I pass following order:

ORDER

(1) First Appeal Nos.711/2009 and First Appeal No.717/2009 stand dismissed.

(2) Judgment and award dated 7.11.2008 passed by learned

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11

Chairman , Motor Accident Claims, Tribunal, Yavatmal in Claim Petition Nos.42 and 43/2003 is hereby confirmed.

(3) Respondent No.1, Pandurang s/o Vithobaji Samrutwar, in First Appeal No.711/2009, and respondent No.1, Shankar s/o Ganpat Buddewar, in First Appeal No.717/2009, are entitled to withdraw amount along with accrued interest which is deposited in the Motor Accident Claims Tribunal at Yavatmal.

Both first appeals stand disposed of accordingly. No costs.

JUDGE

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