

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 888 OF 2012

APPELLANT: The New India Assurance Co. Ltd.
(Org. Opponent no.3.) Branch at Nashik,
Through the Divisional Manager,
Dr. Ambedkar Bhavan, 4th Floor, NECL
Building, Seminary Hills, Nagpur.

... Versus ...

RESPONDENTS: 1. Balu Gobra Chavan,
(Org. Claimant) Aged about 235 years, Occu.: Labour,
R/o Pratap Naik Tanda, Sewadas Nagar, Pusad,
Tahsil Pusad, District Yavatmal.

(Org. opponent no.1) 2. Ramesh Waman Karnate,
Aged adult, driver of truck No.MH-15/AG-4492,
R/o Sakur MIG, Tq. Niphad, Dist. Nashik.

(Org. opponent no.2) 3. Ambadas Shripat Sadafal,
(On R.A.) Khedle Zange, Tahsil Niphad,
District Nashik, owner of truck No.MH-15/AG-4492.

Ms. Shiba Thakur, Advocate h/f Shri S. Sanyal, Advocate for the Appellant.
Shri P.R. Agrawal, Advocate for Respondent Nos.2 and 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE OF JUDGMENT : 19th JANUARY, 2021

P.C.

This is an appeal filed under Section 173 of the Motor Vehicles
Act, 1988 (in short "M.V. Act"), challenging the judgment and award dated

13th December, 2011 passed by Motor Accident Claims Tribunal, Pusad in M.A.C.P. No.21/2006. By the impugned judgment and award, the Claims Tribunal has allowed the claim petition filed by respondent No.1 under Section 166 of M.V. Act and awarded compensation of Rs.48,000/- along with interest at the rate of 7% per annum from the date of the petition till its realization.

02] The brief facts necessary to decide the appeal are as under:-

The respondent No.1, who shall be hereinafter referred to as the claimant, had sustained injuries in a motor vehicular accident on 2nd February, 2005 involving truck bearing No.MH-15/AG-4492 which was driven by respondent No.2, owned by respondent No.3 and insured by appellant herein. It was the case of the claimant that he had sustained injuries due to rash and negligent driving by the driver of the offending vehicle. He, therefore, claimed compensation of Rs.1,00,000/- from the Appellant/Insurance Company and the owner of the vehicle.

03] The Appellant – Insurance Company had denied that the accident was caused due to rash and negligent driving by the driver of the truck. The Insurance Company has also taken a defence of breach of terms and conditions of the policy.

04] The Tribunal after considering the evidence on record has recorded a finding that the accident was caused due to rash and negligent driving by the driver of the truck. The Tribunal took note of the fact that the claimant was a labourer and considered his monthly income as Rs.1,500/-. The claimant had sustained injuries resulting in permanent disablement of 15%. Considering the age of the deceased, the nature of the injuries/disablement vis-a-vis the nature of work, the Tribunal has awarded compensation of Rs.40,500/- towards future loss of income, Rs.5,000/- towards pain and suffering, Rs.1,500/- towards actual loss of income for one month and Rs.1,000/- towards medical expenses. The Tribunal has thus computed total compensation of Rs.48,000/-.

05] The Tribunal has recorded a finding that the claimant was a gratuitous passenger and in view of the breach of terms and conditions of the policy, the Insurance Company is not liable to indemnify the insured. The Tribunal has, however, directed the appellant to pay the compensation to the claimant being the third party and recover the same from the insurer.

06] The owner/insured had not contested the claim and has also not challenged the impugned judgment. The challenge raised by the Insurance Company is restricted only to the quantum of compensation.

07] Having gone through the records, it is seen that the amount of

compensation of Rs.48,000/- which is awarded by the Claims Tribunal is otherwise meager. The impugned judgment does not warrant any interference. Hence, the appeal is dismissed.

08] The Appellant/Insurance Company is directed to deposit the compensation of Rs.48,000/- along with the interest at the rate of 7% per annum from the date of petition till the date of its realization within a period of **four weeks**. The compensation with interest is ordered to be paid to claimant on verifying his identity.

(SMT. ANUJA PRABHUDESSAI, J.)

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