

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

FIRST APPEAL NO.1401 OF 2008

[The New India Assurance Company Limited .vs. Smt. Yamunabai @ Sunita wd/o Vijay Zamre and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM: M.S. SONAK, J.

DATED: DECEMBER 10, 2021.

P.C.

None for the appellant and the respondents.

2. This appeal relates to the year 2008 and therefore cannot be adjourned any further. The appeal was called out yesterday but kept today to see if any of the parties or their counsel attend. Even today the same position continues. Normally such appeal will have to be dismissed for non-prosecution. But having regard to its pendency since 2008 and the interim order in operation depriving the claimants of the compensation awarded, reasons are set out for dismissal.

3. This appeal is directed against the judgment and award dated 29.3.2008 made by the Motor Accident Claims Tribunal, Pusad in Claim Petition No.120/2004. From the ground of appeal, it appears that the case of the insurance company is that there was a breach of fundamental terms and conditions of the insurance policy because the offending vehicle was used for high speed.

4. Now if the impugned award is perused, it is clear that this defense of the insurance company has been accepted by the Tribunal. The Tribunal, by relying on the certain decisions and the decision of this court in **United India Insurance Company Limited .vs. Kamal Maruti Darekar and others, 2008 (1) Mh.L.J. 318**, has made an order for pay and recovery.

5. In my judgment, there is no error on the part of the Tribunal in making such an order. In the peculiar facts of the present case, such an order was entirely justified. There is some vague ground raised on the quantum of compensation. This ground, apart from saying that the Tribunal erred, does not give any indication as to why the Tribunal can be said to have erred. On perusing the impugned award and the evidence on record, there is no error detectable.

6. This appeal is therefore devoid of merits and the same is dismissed.

7. If the insurance company has deposited the awarded amount in this court, then the claimants are at liberty to withdraw the same. Interim stay, if any, in this appeal is hereby vacated. The appeal is disposed of in the aforesaid terms.

[M.S. SONAK, J.]

Gulande