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

FIRST APPEAL NO.1493 OF 2008
[New India Assurance Company Limited .vs. Chandrakalabai w/o Ranglal Pawar and others]

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

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CORAM: M.S. SONAK, J.
DATED: DECEMBER 10, 2021.

P.C.

Heard Mr. M.B. Joshi, learned counsel for the appellant-insurance company, and Mr. Manzar Anis, learned counsel holding for Mr. M.R. Joharapurkar, learned counsel for respondent no.3.

2. The challenge in this appeal is to the impugned judgment and award dated 19.7.2008 made by the Motor Accident Claims Tribunal (Tribunal), Buldana awarding compensation of Rs.55,030/- to the respondent-claimant along with interest at the rate of 7.5% per annum.

3. The learned counsel for the appellant submits that this was a case of a fundamental breach of the terms of the insurance policy. He submits that, in any case, the evidence on record established contributory negligence, and further the quantum of compensation is quite excessive.

4. The learned counsel for the respondent submits that there is no error in the impugned award. He

submits that there is no evidence about the breach of any terms of the policy and the compensation amount is, in fact, less than what should have been awarded to the claimant.

5. Having considered the rival contentions, I am satisfied that the impugned award made by the Tribunal does not warrant any interference in the aspect of contributory negligence. The Tribunal has quite correctly noted that there was no fault on the part of the claimant to give rise to the claim of contributory negligence. Besides the evidence on record indicates that the injuries sustained by the claimant resulted in her suffering about 40% disability and the award is therefore not excessive.

6. This is also not a case of breach of any conditions of the insurance policy. The evidence on record indicates that the claimant was traveling in a jeep and the owner of the jeep was her friend. She was a gratuitous passenger, but the insurance policy covers the risk of such a passenger traveling therein.

7. Mr. Joshi, the learned counsel for the appellant, relied on **National Insurance Company Limited .vs. Meena Aggarwal, 2009 (4) Mh.L.J. 20,** to support his ground about the fundamental breach of the terms of the policy. In the said decision, there was clear evidence that private vehicle was used for hire/commercial purposes. There is no such evidence in the present matter and therefore this decision will not assist the case of the appellant.

8. For all the aforesaid reasons, this appeal is liable to be dismissed and is hereby dismissed. Interim order, if any, stands vacated. The amount deposited by the appellant-insurance company can now be withdrawn by the claimant.

9. The registry to facilitate the transfer of such amount to the bank account of the claimant, after obtaining proper identification/bank details.

[M.S. SONAK, J.]

Gulande