

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

FIRST APPEAL NO.1436 OF 2008

[Divisional Manager, New India Assurance Company Limited, Nagpur .vs. Rajesh s/o Bhauraoji  
Hatwar and one]

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

CORAM: M.S. SONAK, J.

DATED: DECEMBER 10, 2021.

P.C.

None for the appellant or the respondents.

2. Since this is an appeal of the year 2008, there is no point in adjourning any further. Though in such circumstances the appeal is required to be dismissed for non-prosecution, reasons are stated for the dismissal having regard to the year of pendency, the frivolity of the grounds, and the possible deprivation of compensation to the needy claimants.

3. The appellant-insurance company has challenged the impugned award dated 20.2.2008 made by the Motor Accident Claims Tribunal (Tribunal) Nagpur awarding the claimant compensation of Rs.4,25,000/- together with interest at the rate of 7.5%. The appellant-insurance company has broadly raised the following grounds in support of this appeal :

a] That in addition to truck and trailer which was insured with the appellant-insurance company, even a scooter bearing registration no. MH-31-F-2825 was responsible for the accident. Further the scooter driver Rajesh s/o Shankarrao Pedulwar was driving the scooter without any valid driving license, which contributes to the accident.

b] The finding of the negligence of the insured vehicle is quite perverse and not supported by the evidence on record. The quantum of compensation is excessive and the false disability certificates have been considered by the tribunal.

4. Having perused the record, I am satisfied that the Tribunal has assessed the evidence on record quite fairly and has correctly concluded that there was no rashness or negligence on the part of the driver of the scooter. The Tribunal has correctly concluded that the driver of the insured vehicle lost control over the vehicle and dashed against the scooter, as a result of which, one of the persons on the scooter died and the claimant in the said petition was severely injured resulting in the amputation of his right leg above the knee.

5. The evidence on record indicates that criminal cases were registered against the driver of the insured vehicle. The evidence of Rajesh Hatwar (PW-1) coupled with the FIR establishes, by the standard of preponderance of probability, that it is the insured vehicle that was driven in a rash and negligent manner, resulting in the accident, which

gave rise to the claim petition.

6. There is no evidence that the driver of the scooter was driving the scooter without any valid license or that this is what contributed to the accident. The evidence on record, as noted earlier, overwhelmingly establishes that it was on account of rash and negligent driving by the driver of the insured vehicle that this accident was caused.

7. Even on the aspect of quantum of compensation there is no case made out for interference at the behest of the insurance company. The Tribunal has applied correct principles and its determination is quite conservative.

8. For all the aforesaid reasons, this appeal is required to be dismissed and is hereby dismissed. If the insurance company has deposited the compensation amount and the same has not yet been withdrawn by the claimants, then they are at liberty to do so. The interim order, if any, is hereby vacated.

[M.S. SONAK, J.]

Gulande