

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2107 OF 2018
WITH CIVIL APPLICATION NO. 4982 OF 2022

UNITED INDIA INSURANCE COMPANY LTD THR ITS
DIVISION MANANGER AURANGABAD
VERSUS
JYOTI SANJAY OMASE AND OTHERS

...
Advocate for Appellant : Mr. S.G. Chapalgaonkar
Advocate for Respondent Nos.1 to 4 : Mr. M.B. Sandanshiv
....

CORAM : S.G. DIGE, J.
DATE : 25th July, 2022

ORDER :

. Being aggrieved and dissatisfied by the judgment and award passed by Motor Accident Claims Tribunal, Ahmednagar (for short 'Tribunal') in M.A.C.P. No.567 of 2016, under Section 166 of Motor Vehicles Act, 1988 (for short 'M.V. Act'), the appellant - original respondent No.2, the Insurance Company has preferred this appeal.

2. Learned Counsel for appellant submits that, the Tribunal has passed ex-parte judgment and award against the appellant without giving opportunity to prove their

claim. It is contention of learned Counsel that, the notice under Section 140 of the M.V. Act was served on appellant on 16th December, 2016 and appearance date was given on 14th February, 2017. Unfortunately, during that, period the advocate on record before the Tribunal had met with an accident and could not appear before the Tribunal on given date. Thereafter, the Tribunal decided the matter and passed ex-parte order against the appellant.

3. The learned Counsel for appellant submits that, notice under Section 166 of M.V. Act was not served on the appellant. The appellant has good case but no opportunity of hearing is given to appellant and behind back of appellant compensation of amount of Rs.55,70,272/- is awarded to the respondents. The learned advocate on record after recovery from the accidental injuries appeared before the Tribunal and had filed the application for setting aside the ex-parte judgment and award. It was filed on behalf of advocate and not on behalf of Insurance Company i.e. appellant therefore, that application was rejected. Hence, requested

to allow the appeal.

4. Learned Counsel for respondents submit that, the Court may pass appropriate orders and also requested to impose heavy costs on appellant as he did not appear before the Tribunal in spite of receiving notice.

5. I have heard both the learned Counsel. Perused judgment and award passed by the Tribunal. The Tribunal has awarded amount of compensation of Rs.55,70,272/- to the respondents. The Tribunal has proceeded ex-parte against respondent No.2 i.e. appellant. The Tribunal has awarded the compensation amount more than Rs.55,00,000/- hence, it is necessary to give an opportunity to the appellant to putforth their side and to lead their evidence. The reason given by the appellant that, the learned advocate on record had met with an accident is good ground to set aside the order. Hence, I pass the following order :-

ORDER

(a) Appeal is partly allowed.

- (b) Matter is remanded back to the learned Tribunal for fresh hearing.
- (c) Both the parties are permitted to lead their evidence, if they desires.
- (d) The amount deposited before this Court by the appellant out of that amount, amount of Rs.15,00,000/- along-with accrued interest thereon is withdrawn by the respondents be remained with the respondents.
- (e) Remaining amount along-with interest be transferred to learned Tribunal, Ahmednagar, after decision of the matter. If respondents are entitled for compensation, the amount given to the respondents be deducted from the compensation awarded to the respondents.
- (f) Payment given to the respondents shall be subject to the final outcome of the award.
- (g) Appellant shall pay amount of Rs.10,000/- to the respondents as costs.
- (h) Learned Counsel for for appellant submits that, appellant will deposit the amount of Rs.10,000/-

before the learned Tribunal within four (04) weeks.

The respondents can withdraw that amount after deposit of the same by the appellant.

- (i) The learned Tribunal is requested to dispose of the claim petition as early as possible, preferably within six (06) months.
- (j) Accordingly, the appeal is disposed of in above terms.
- (k) All pending Civil Applications are disposed of.

[S.G. DIGE, J.]