

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 2300 OF 2016

The New India Assurance Company Ltd.,
Through its Administrative Officer
Legal Hub,
Shri. Ravikant Rajendraprasad Yadav
Age : 26 years, Occ : Service,
R/o Divisional Office-I,
New India Insurance Co., Ltd.
Adalat Road, Aurangabad

..APPELLANT

(Original Respondent no.2)

VERSUS

1. Gopal Manik Gite
Age : 22 years, Occ : Agri.,
R/o Lohasar Khandgaon,
Tq. Pathardi, Dist. Ahmednagar.
2. Pritpal Singh S/o Dilip Singh
Age : Major, Occ : Business,
R/o 107, Sundaram Complex,
Indor (MP) 452 001.

..RESPONDENTS

(R.No.1-Ori. Claimant &
R. No.2 – orig. Resp. No.1)

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Advocate for Appellant : Mr.Swapnil S. Rath
Advocate for Respondent No. 1 : Mr. N.C. Garud
Advocate for respondent no.2 : Mr.Ajit D. Kasliwal

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CORAM : S.G.DIGE, J.

DATE : 27.09.2022

JUDGMENT :

Being aggrieved and dissatisfied by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Ahmednagar (for short, "the Tribunal"), the appellant – insurance company (original respondent no.2) has preferred this appeal.

2. It is the contention of the learned counsel for the appellant that there was sole negligence of the driver of the motorcycle on which respondent no.1 was a pillion rider along with one more pillion rider. The accident was occurred due to negligence and careless driving of the rider of the motorcycle with two pillion riders, but this fact was not considered by the Tribunal. Respondent No.1 had not led any evidence to prove the nature of the injury as well as had not proved permanent disability certificate by examining the Medical Officer, who has issued the same then also the Tribunal has awarded the compensation. Hence requested to allow the appeal.

3. It is the contention of the learned counsel for respondent no.1 that respondent no.1 has suffered 9% permanent disability in the said accident. The said accident was occurred due to sole negligence of the offending truck driver. The crime was registered against the offending truck driver. The compensation is awarded by the Tribunal on the basis of evidence led before the Tribunal. The judgment and order passed by the Tribunal is legal and proper.

4. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal.

5. The issues involved in this appeal are sole negligence of the deceased rider of motorcycle and compensation awarded without medical evidence.

6. Respondent no.1 – original claimant had filed claim petition for getting compensation on the ground that on 22nd May, 2013, when he was travelling on motorcycle as one of the pillion rider, there was one more pillion rider, in

short, motorcycle rider was driving the vehicle triple seat. The said motorcycle met with an accident with the truck bearing registration no. MP – 09 KC-1258. In the said accident, the rider of the motorcycle died on the spot and claimant suffered injuries. Admittedly, the offence in respect of the occurred accident is registered against the truck driver. The Tribunal has observed that the accident is occurred due to sole negligence of the truck driver.

7. From F.I.R. Exhibit-26 and spot panchanama Exhibit-27, it do not show that there was negligence of the rider of the motorcycle. Moreover, to prove the negligence of rider of the motorcycle the appellant has not examined the driver of the truck or any other witness. The documents produced on record indicate the negligence of truck driver. Hence I do not find merit in the contention of the learned counsel for the appellant that there was sole negligence or contributory negligence of the deceased motorcycle rider.

8. In respect of compensation without proving

disability certificate awarded by the Tribunal, it appears from the record that after accident the claimant was admitted in the City Care Hospital at Ahmednagar. Dr.Surana of City Care Hospital has given 9% permanent disability by considering the fracture to right optical bone. To prove the contents in the disability certificate witness summons and bailable warrants were issued against the concerned doctor. After serving of bailable warrant, the concerned doctor did not appear before the Tribunal. Hence on the basis of the material on record and medical bills, the Tribunal has awarded compensation of Rs.75,000/-. The Tribunal has passed the well reasoned order in that regard. Hence it is not necessary to interfere in it.

9. In view of the above, I pass the following order :-

ORDER

- (i) The appeal is dismissed.
- (ii) No order as to costs.

(iii) Respondent no.1 is permitted to withdraw the amount deposited by the appellant, if not withdrawn.

[S.G.DIGE]
JUDGE

SGA/-