

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 1488 OF 2019
WITH
CIVIL APPLICATION NO. 10604 OF 2016

New India Assurance Company Ltd.
A Company registered under
the Companies Act &
a subsidiary of General Insurance
Company of India Ltd.
Having one of its Divisional Office
at Adalat Road, Aurangabad
through its authorized signatory

...Appellant
(Org. R. No.2)

versus

1. Rani Ganesh Gite
Age 22 years, Occ. Household
R/o. Pimp[ri] Laudi, Azampur
Tq. Sangamner, Dist. Ahmednagar

2. Gorakshnath Umaji Gite
Age 49 years, Occ. Agriculture
R/o. As above

3. Sindhubai Gorakshnath Gite
Age 42 years, Occ. Household
R/o. As above (Ori. Claimants)

4. Rangnath Umaji Gite
Age major, Occ. Trader
R/o. Pimpri Lauki, Azampur
Tq. Sangamner, Dist. Ahmednagar ...Respondents

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Mr. A.B Kadethankar, advocate for the appellant
Mr. R.A. Tambe, advocate for respondent Nos. 1 to 3.

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CORAM : SANDIPKUMAR. C. MORE, J.

**Date of Reserving
the Order : 18.08.2022**

**Date of pronouncing
the Order : 15.09.2022**

ORDER:-

1. Being dissatisfied with the judgment and award dated 14.01.2016 passed by the learned Member, Motor Accidents Clam Tribunal, Shrirampur (hereinafter for the sake of brevity referred to as "the Tribunal") in Motor Accident Claim Petition No. 171 of 2015, the appellant-Insurance Company, which was original respondent No.2 in the claim petition, has preferred this appeal. Initially, the appellant-Insurance Company had challenged the impugned judgment and award on the ground that the learned Tribunal awarded excessive compensation and that the involvement of vehicle in the accident is doubtful. However, at the time of arguments, learned counsel for the appellant-Insurance Company waived the ground of challenge in respect of grant of excessive compensation and preferred to argue only on the ground of non involvement of vehicle in the accident.

2. The background facts leading to present appeal are as under:-

One Ganesh Gorakshnath Gite i.e. the husband of respondent No.1 and son of respondent Nos. 2 and 3, on 22.6.2015 had gone to the house of his uncle at village Ashwi. Thereafter, at about 9.00 p.m. while returning home alongwith his uncle Rangnath Umaji Gite i.e. present respondent No.4 on motor cycle bearing No. MH-17-BG-

9711 as pillion rider, respondent No.4 applied brakes suddenly near the field of one Subhash Gaikwad on Ashwi Shiblapur road. Resultantly, the motor cycle got slipped and Ganesh fell on the road and sustained severe injuries to his head. Though Ganesh was taken to Pravara Hospital, Loni and therefrom shifted to Suvichar Hospital, Nashik, but he succumbed to the injuries on the next day on 23.6.2015 at about 12.30 noon. The learned Tribunal after considering entire evidence on record was pleased to pass the impugned judgment, awarding amount of Rs.38,00,102/- to respondent Nos. 1 to 3 alongwith interest at the rate of 9% p.a. from the date of petition till its realization.

3. Learned counsel for the appellant-Insurance Company vehemently submitted that the accident occurred on 22.6.2015 but report in respect of the same was in fact lodged on 8.7.2015, which prima facie appears to be doubtful mainly because the accused in respect of the accident, who is present respondent No.4 is the uncle of deceased. Thus, learned counsel for the appellant submitted that the delay in lodging F.I.R. itself suggests that there was collusion between the claimants and respondent No.4. He further submitted that the claimants did not examine any eye witness to the accident to establish as to in what manner the accident took place. The appellant has claimed that deceased was in fact driven the said motor cycle and due to his negligence only the accident took place which resulted into his death.

4. On the contrary, learned counsel for respondent Nos. 1 to 3, who are original claimants, submitted that the appellant- Insurance Company before the learned Tribunal could not discharge the burden to prove its assertion that deceased had in fact driven the vehicle at the time of accident and due to his own fault he died. He thus supported the impugned judgment and award by submitting that learned Tribunal properly considered the material on record.

5. Heard rival submissions and also perused the impugned judgment and award alongwith record and proceedings of the claim petition with the assistance of learned counsel for the rival parties.

6. Though the appellant-Insurance Company initially challenged the impugned judgment and award on the grounds of excessive compensation and involvement of vehicle in the accident being doubtful, but later on at the time of arguments, learned counsel for the appellant-Insurance Company waived the first ground of granting excessive compensation. Thus, the appellant-Insurance Company is now contesting the appeal only on the sole ground that there was collusion between the claimants and respondent No.4 driver of offending motor cycle for getting compensation by showing false involvement of vehicle in the accident. It is not disputed that the accident had taken place on 22.6.2015 and report in respect of the same was lodged on 8.7.2015 i.e. after about 16 days. Learned

counsel for the appellant pointed out that driver of alleged offending motor cycle is the real uncle of deceased and therefore, he might have shown his vehicle involved in the accident only to grab the compensation amount by narrating concocted story that at the relevant time of accident, he applied sudden brakes and caused the accident.

7. Thus, learned counsel for the appellant-Insurance Company intends to say that involvement of the vehicle was shown only for grabbing the compensation amount without there being any actual involvement. It is significant to note that the story under the written statement put up by the appellant-Insurance Company before the learned Tribunal is that deceased Ganesh was in fact driving the motor cycle and due to his negligence the accident took place. However, to prove such contention, the Insurance Company has not adduced any evidence. The contention of the Insurance Company that involvement of offending motor cycle in the accident is doubtful, is only based on one thing i.e. delay in lodging an F.I.R. in respect of the accident. However, the record shows that after the accident took place on 22.6.2015, initially there was registration of accidental death with Upnagar police station, Nashik, as deceased died in the Hospital at Nashik. However, on 30.6.2015, after receiving the papers of such accidental death case, further investigation in respect of the accident was carried out. P.W.2 Police Head Constable Mr. Waghmare, who had investigated the disputed accident, has clearly stated before the

Court that during investigation it was revealed that respondent No.4 was in fact driving the motor cycle involved in the accident. This witness has categorically denied the suggestion made on behalf of the appellant-Insurance Company before the learned Tribunal that deceased was driving the said motor cycle. As such, the delay in lodging an F.I.R. in respect of the accident has been successfully explained as there was an A.D. case initially registered as mentioned above.

8. It is extremely important to note that the appellant-Insurance Company did not adduce any evidence to discharge the burden of showing non involvement of the vehicle in the accident. It is only relying on the delay in lodging the F.I.R. in respect of the accident. As such, the only ground of challenge raised by the appellant-Insurance Company in this appeal cannot be answered in favour of the Insurance Company. On going through the impugned judgment and award it is clearly evident that the learned Tribunal has properly appreciated the material on record and came to the conclusion that the appellant-Insurance Company is also jointly and severally liable for paying the compensation alongwith the respondent No.4.

9. In view of the above discussion, no substance is found in the instant appeal, and therefore, the same is dismissed. No order as to costs.

10. Respondent Nos. 1 to 3 are entitled to withdraw the balance amount of compensation alongwith accrued interest thereon till date.

11. Pending civil application does not survive and the same is accordingly disposed of.

(SANDIPKUMAR. C. MORE, J.)

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