

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

FIRST APPEAL NO.185 OF 2012
IN
CLAIM PETITION NO.110/2008

APPELLANT : New India Assurance Co. Ltd.
(Ori. Resp-2 on R.A.) Through its Divisional Manager,
Dharmadaya Cotton Fund Road,
Walcut Compound, Amravati
Tq. & Dist. Amravati.

//VERSUS//

RESPONDENT : 1. Diksha w/o Rajendra Kalbande
(Ori. Applicant on R.A.) Aged 32 years Occ. Nil
Res. Nos.2 & 4 deleted as
per Court's Order dt.
29.11.2010
2. ~~Rajesh Patre~~
~~Aged Adult Occ. Nil~~
~~Both r/o Kathora (Bk.)~~
~~Tq. & Dist. Amravati.~~
(Ori. Resp-1 on RA) 3. Mahesh s/o Sadashivrao Bahe
Aged Adult, r/o Chandur Bazar
Dist. Amravati.
4. ~~Anil Lokhande~~
~~Aged Adult Occ. Auto Rickshaw Driver~~
~~r/o Bemoda, Yashoda Nagar, Amravati.~~

Shri Akhilesh Potnis, Advocate h/f Shri M.M. Sudame, Advocate for the
Appellant.

Ms. Aastha Sharma, Advocate h/f Shri P.R. Agrawal, Advocate for
Respondent No.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 24th FEBRUARY, 2022.

ORAL JUDGMENT

01] This is an Appeal under Section 173 of the Motor Vehicles Act, 1988, (hereinafter referred to as “the said Act”) challenging the Judgment and Award dated 04/08/2010 in Claim Petition No.110/2008. By the impugned judgment, the Claims Tribunal has partly allowed the Petition and directed the Respondent Nos.1 and 2 to pay to the Claimant compensation of Rs.42,000/- with interest @ 7.5% per annum from the date of the petition till final realization.

02] Heard Shri Potnis, learned counsel for the Appellant and Ms. Aastha Sharma, learned counsel for the Respondent No.1. I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

03] The Respondent No.1, who shall be referred to as the Claimant, was a pillion rider on motorcycle bearing registration No.MH-27/Z-6976. The said motorcycle was driven by one Rajesh Pathare. When the motorcycle reached near the farm of Gajbe, there was a collision between the said motorcycle and the auto rickshaw bearing registration No.MH-27/C-6658. As a result of which, the Claimant had suffered grievous injuries in the said accident. The Claimant therefore claimed total compensation of Rs.1,00,000/-.

04] The owner of the motorcycle did not contest the proceedings. The Appellant – Insurance Company denied the accident and the injuries sustained by the Claimant. The Appellant – Insurance Company also claimed that the driver of the motorcycle was not holding a valid and effective

driving licence. The Appellant – Insurance Company also claimed that four persons were travelling on the motorcycle violating the Traffic Rules. The Appellant – Insurance Company therefore denied its liability to indemnify the insured for breach of terms and conditions of the policy.

05] The Tribunal, after considering the evidence on record, held that the motorcycle was involved in the said accident. The Tribunal has also recorded a finding that the Insurance Company has failed to prove the breach of terms and conditions of the policy and has held that it is liable to indemnify the insured. The Tribunal has also recorded a finding that the Claimant was admitted in Navjeevan Hospital, Amravati from 20/11/2007 to 30/11/2007. She had suffered fracture to right tibia upper third C.C. screw were fixed and plating was done. Considering the nature of the injuries sustained in the said accident, the Tribunal has awarded compensation of Rs.16,534/- towards medical expenses, Rs.10,000/- towards loss of income, Rs.5,000/- towards pain and suffering and Rs.10,000/- towards other miscellaneous expenses. The Tribunal thus awarded total compensation of Rs.42,000/-. The compensation awarded by the Tribunal cannot be said to be exorbitant. Hence, the impugned judgment does not warrant any interference.

06] Hence, the Appeal has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)