

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

FIRST APPEAL NO.186 OF 2012
IN
CLAIM PETITION NO.111/2008

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. Rajesh Pathre
(Ori. Applicant on R.A.) Aged Adult Occ. Nil
All r/o Kathora (Bk.)
Tq. & Dist. Amravati
(Ori. Resp-1 on RA) 2. Mahesh s/o Sadashivrao Bahe
Aged Adult
r/o Chandur Bazar Dist. Amravati.
Res. No.3 deleted as per 3. ~~Anil Lokhande~~
Court's Order dt. Aged Adult Occ. Auto Rickshaw Driver
29.11.2010 ~~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, challenging the Judgment and Award dated 04/08/2010 passed by

Motor Accident Claims Tribunal, Amravati in Claim Petition No.111/2008. 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.30,600/- 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 records reveal that Respondent No.1/original Claimant was driving the motorcycle bearing registration No.MH-27/Z-6976 along with his sister Diksha Kalbabnde, her and daughter as a pillion rider. There was a collision between the motorcycle and auto rickshaw bearing registration No.MH-27/C-6658. The records also reveal that crime was registered against the driver of the auto rickshaw for driving the vehicle in a rash and negligent manner. The evidence on record also indicates that the Claimant had suffered grievous injuries and he was referred to Yadgire Superspeciality and Critical Care Unit, Amravati. The Tribunal has relied upon the decision in the case of ICICI Lombard General Insurance Co. Ltd. Vs. Ashaben Gautambhai Vala and others reported in 2008 ACJ 2814. The Tribunal has rejected the contention of the Appellant – Insurance Company that it was not liable to pay any compensation to the Claimant.

04] It is pertinent to note that the Claimant, the rider of the motorcycle, was the borrower/permissive user of the vehicle. In terms of the judgments of the Hon'ble Apex Court in Ningamma and Another Vs. United India Insurance Company Limited reported in (2009) 13 SCC 710 and Ramkhiladi and Another Vs. United Insurance Company Limited reported in (2020) 2 SCC 550, the rider steps in the steps of the owner and cannot claim compensation under Section 163-A of the said Act. As held by the Hon'ble Apex Court, the claim of the owner/borrower/permissive user would be limited to personal accident coverage, as per the contract of the insurance covering the vehicle.

05] It is seen that the Tribunal has awarded compensation of Rs.5,600/- towards medical expenses, Rs.10,000/- towards loss of annual income, Rs.5,000/- towards pain and suffering and Rs.10,000/- towards other miscellaneous expenses. The Tribunal has thus awarded total compensation of Rs.30,600/-. The compensation awarded by the Tribunal is not excessive. It would not be in the interest of justice to drive the Claimant to institute fresh proceedings under the policy. Hence, I am not inclined to interfere with the judgment.

06] The Appeal is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)