

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

FIRST APPEAL NO. 3235 OF 2016

United India Insurance Company Ltd.,
through its Branch Manager,
Bazar Tal Road, Ward No.3,
Shrirampur, Taluka Shrirampur,
Dist. Ahmednagar,
through its authorised Signature
Manager (Legal Hub), Divisional Office-I,
at Aurnagabad.

... APPELLANT.
[Orig. Respondent No.2.]

VERSUS

1. Jalindar S/o. Dattatraya Shinde,
Age 39 years Occ. Agril,
& Milk Business, R/o. Kolhar Bk.,
Taluka Rahata, Dist. Ahmednagar. (Original claimant)
2. Balasaheb S/o. Eknath Thete,
Age major, Occ. Business,
R/o. Kolhar Bk. Taluka Rahata,
Dist. Ahmendagar (Orig. respondent No.1.)
... RESPONDENTS.

Mr. Vinodkumar R. Mundada, Advocate for appellant.
Mr. R.B. Dhakane, Advocate for respondent No.1.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 31ST JULY, 2023
PRONOUNCED ON : 8 AUGUST, 2023.**

JUDGMENT :-

The appellant/original respondent No.2 i.e. insurer impugns the judgment and award dated 16.4.2014 passed by the Motor Accidents

Claim Tribunal, Shrirampur Dist. Ahmednagar in M.A.C.P. No. 188 of 2010. The respondent No.1 herein had instituted the claim under Section 166 of the Motor Vehicles Act, for compensation of Rs. 3 Lakhs on account of permanent disability sustained by him in a vehicular accident dated 8.2.2010. It was the contention of the respondent No.1 that while he was walking on Loni to Kolhar road, an offending pick-up van bearing No. MH-14/V-9425 dashed him from backside. He suffered multiple injuries resulting into permanent disablement. Crime No. I-54/2010 was registered against the driver of the said vehicle. According to respondent No.1, prior to accident, he was engaged in the agricultural and milk business and maintaining his family. However, on account of permanent disablement he lost his earning capacity.

2. The claim was contested by the appellant insurer on the ground that there is delay in lodging the FIR. The police have wrongly prosecuted the driver of the offending vehicle. The claim is excessive and exorbitant. By way of statutory defence, it was contended that the driver of the pick up van was not holding valid and effective driving licence as on the date of the accident.

3. The claimant in his endeavour to establish his case, recorded his own evidence and relied upon the evidence of CW-2 Dr. Ashish Somani who had issued permanent disability certificate dated 6.1.2011 placed at Exh.38. It depicts that claimant suffered 20% permanent disability. No evidence is recorded on behalf of the respondents.

4. The Tribunal, after evaluation of the evidence on record, concluded that the accident occurred due to rash and negligent driving of

the pick- up van, so also, the claimant suffered permanent disablement resulting into loss of earning capacity.

5. The Tribunal rejected the defence of the insurer on the point of driving licence and passed an award of Rs. 2,33,550/- against respondent Nos. 1 and 2 directing them to jointly and severally pay compensation amount to claimant alongwith interest @ 9% p.a. from the date of the petition.

6. Mr. VR. Mundada, learned counsel appearing for the appellant submits that the Tribunal recorded erroneous findings on the point of defence raised by the insurer. He would submit that the driver of the pick up van had authorization to drive the transport vehicle from 2.1.2007 to 1.1.2008. The insured vehicle is a goods carriage, hence it is a transport vehicle. As on the date of the accident the driver had no valid authorization.

7. On examination of the aforesaid contentions, it can be observed from record that the driving licence is placed at Exh.42 shows authorization for driving the transport vehicle is from 2.1.2007 to 1.1.2010. However, authorisation for Light Motor Vehicle (Non Transport) has been issued with validity upto 19.12.2021. The R.C. Book of the vehicle shows that the Gross Vehicle Weight of offending vehicle is 2820 Kgs. It does not exceed 7500 kgs. If we consider the definition of LMV under Motor Vehicles Act, the offending vehicles falls in the category of Light Motor Vehicle.

8. The Larger Bench of the Supreme Court of India in the

matter of *Mukund Dewangan vs. Oriental Insurance Company Limited (2017) 14 SCC 663*, has observed that once the person holds authorization to drive Light Motor Vehicle, he need not obtain endorsement for transport vehicle for driving the LMV, i.e. vehicle having gross vehicle weight below 7500 kgs.

8. If the aforesaid proposition is applied to the present case, the defence raised on behalf of the insurer does not survive. The Tribunal recorded adequate reasons in para. Nos. 27 and 28 of the impugned judgment while negating the defence of the insurer. No fault can be found in the approach of the Tribunal in the light of the pronouncement in the case of *Mukund Dewangan (supra)*.

9. Mr. V.R. Mundada, learned advocate appearing for the appellant further submits that the judgment in the case of *Mukund Dewangan (supra)* is further referred to the larger Bench for reconsideration since the coordinate Bench of the Supreme court doubted the correctness of the legal position espoused in the judgment of *Mukund Dewangan*. He relied upon the order of Reference to Larger Bench passed in the case of *“Rambha Devi and others”*.

10. Though the submissions advanced on behalf of the appellant are lucrative, it is trite that only because the correctness of any judgment is doubted or reference is made to the larger bench, as long as the larger Bench disturbs the legal position by taking different view, the ratio of judgment under reference shall hold the field or will continue to prevail in the subject matter.

11. Admittedly, till this date, the law declared by the Supreme Court in the matter of Mukund Dewangan(supra) is holding the field. Hence, the contention of the appellant cannot be accepted.

12. The second contention raised on behalf of the appellant is that, the Tribunal wrongly relied upon the evidence of CW-2 on the point of permanent disablement though he is not treating doctor of the applicant. Pertinently, CW-2 has deposed before the Court that there was malunited fracture of lateral condyle on right elbow and configuration. There is restriction on the movement. He assessed the disablement to 20% after taking the X-ray and physical examination of the claimant. It is not in dispute that CW-2 Dr. Ashish Somani is an Orthopedic Surgeon and he is an expert in the field. In that view of the matter, merely because the treating doctor is not examined, the expert opinion of CW-2 Dr. Somani cannot be discarded. In that view of the matter, no merit found in second contention.

13. The third contention raised on behalf of the appellant is that, there is a delay in lodging the FIR and the driver of the insured vehicle has been falsely prosecuted. True that, FIR is belatedly lodged, however claimant explained that he was admitted at Sudarshan Hospital Nasik for 25 days. Thereafter, he returned back and lodged the FIR. The claimant has given plausible explanation for the delay. It is trite that delay in lodging FIR is not a ground to dislodge the case of the claimant, unless it is established by other evidence on record that the FIR itself is based on inadmissible evidence or the claim is collusive between the owner and claimant.

14. In the present case, except the defense regarding delay in lodging the FIR, nothing is brought on record. The claimant himself is an eye witness of accident and he deposed about the involvement of the insured vehicle. In that view of the matter, case of the claimant cannot be doubted.

15. So far as the quantum of compensation is concerned, the Tribunal has assessed the compensation on notional income of the claimant and loss of earning is considered commensurate to the permanent disablement. The medical expenses are awarded as per record and a paltry sum is awarded towards the non-pecuniary damages. Nothing is brought to the notice of the court by which the assessment can be faulted. Resultantly, there is no merit in the appeal. Same is dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-