



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 CIVIL APPLICATION NO.12630 OF 2022
IN FA/1857/2022 WITH CA/11010/2022 IN FA/1857/2022

VITTHAL MARUTI MHASKE
VERSUS
THE NEW INDIA ASSURANCE CO. LTD., THR ITS AUTHORISED
SIGNATORY, AURANGABAD AND ORS

...
Advocate for Applicant : Mr. C. V. Bodkhe
Advocate for Respondent No.1 : Mr. M. M. Ambhore
...

CORAM : ARUN R. PEDNEKER, J.
DATE : 08/12/2023

PER COURT :

1. Heard the learned Advocate appearing on behalf of respective parties.
2. The present appeal is filed by the Insurance Company against the order of the Tribunal on the ground of quantum of compensation granted by the Tribunal and also on the ground of contributory negligence of the injured as the motorcycle rider/injured was not holding required permit and fitness and licence, therefore there is also breach of terms of the policy.
3. The Tribunal has not taken into consideration the relevant evidence. The Tribunal has also relied on the Judgment of in *Pepsu Road Transport Corporation Vs. National Insurance Company, [2013*

(6) *Mah.L.J. 913]*, whereby the Hon'ble Apex Court held as under : -

"In the process of employment, the driver had been put to a driving test and he had been imparted training also. The accident took place only after six years of his service. In such circumstances, it cannot be said that the insured is at fault in having employed a person whose licence has been proved to be fake by the insurance company before the Tribunal. Insurance company is liable to indemnify the appellant and, hence there can be no recovery of the compensation already paid to the claimants."

4. In view of the same, I deem it appropriate to allow the applicant to withdraw 75% of the compensation amount along with accrued interest thereon till date as directed by the Tribunal, subject to filing of undertaking to the satisfaction of the Registrar Judicial of this Court. The application for withdrawal of amount stands disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.