

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

FIRST APPEAL NO. 466 OF 2018

Atul Manohar Desale (Patil)
Age : 27 years, Occu. : Nil,
R/o. Babhulwadi, Taluka
& District Dhule.

.. Appellant
(Orig. claimant)

Versus

1. Mukunda Gangaram Patil,
Adult, Occu. : Owner,
R/o. Saindane, Taluka and
District Dhule.
2. ICICI Lombard General Insurance
Company Limited, Dhule.
3. Pravin Tulshiram Nikam,
Age : 37 years, Occu. : Driver,
R/o. Saindane, Taluka and
District Dhule.

.. Respondents
(Orig. defendants)

Mr. Anup D. Mane, Advocate h/f Mr. Amol S. Sawant, Advocate for the Appellant.

Mr. Gajendra D. Jain, Advocate for Respondent Nos. 1 and 3.

Mr. V. N. Upadhye, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 20th OCTOBER, 2023.

ORAL JUDGMENT :-

. Heard the parties.

2. The appeal is filed challenging the judgment and order dated

13.10.2017 passed by the learned Member, M.A.C.T., Dhule rejecting the claim petition of the appellant holding that the appellant could not prove the accident and he received injuries in that accident. It is specific case of the appellant that one more claim petition was filed by co-passenger namely Babaji Madhavrao Khairnar and in that claim petition the owner of the company held liable and was directed to pay the compensation to the insurer. It is thus submitted that, once the company has accepted the liability in that case by not challenging the said judgment, it is not open for the Insurance Company to challenge or to take objection as regards accident.

3. On going through the judgment it is seen that, the learned Court below has dismissed the claim petition mainly holding that the claimant has failed to prove that he suffered permanent disability in an accident arising use of motor vehicle involving the vehicle of respondent No. 1 driven by respondent No. 3. There is no other discussion about the entitlement or excessment of injuries.

4. Learned advocate for the appellant has placed reliance upon the judgments of the Hon'ble Apex Court in the case of Janabai wd/o Dinkarrao Ghorpade and others Vs. ICICI Lambord Insurance Company Limited reported in (2022) 10 SCC 512 and in the case of Ravi Vs. Badrinarayan and others reported in 2011 AIR SCW 1530 in support of

his case. The Hon'ble Apex Court has held that mere delay in lodging FIR is no reason to doubt the accident. This Court finds that the impugned judgment is contrary to the judgments relied upon by the appellant in this case.

5. Considering this, this Court finds that, it is a fit case to remand the matter for fresh enquiry before the learned Member, M.A.C.T., Dhule. Hence, the following order is passed.

6. The appeal is partly allowed.

7. The judgment and order dated 13.10.2017 passed by the learned Member, M.A.C.T., Dhule is quashed and set aside. The matter is remanded back for fresh consideration to the learned Member, M.A.C.T., Dhule.

8. With this, the appeal stands disposed off.

9. Needless to say that, learned Member, M.A.C.T., Dhule has to conduct fresh enquiry without being influenced by the observations made by this Court.

(KISHORE C. SANT, J.)

RS.B.