

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 681 OF 2019

Master Pravin Anand Latavade	}	
Age 15 years, Occ. Education,	}	
R/o. Ward No. 16, House No. 807,	}	
Tinbati Char Rasta Chowk,	}	
Ichalkaranji, Tal. Hatkanangale,	}	
District Kolhapur.	}	
	}	Appellant
	}	[orig.. Claimants]

Versus

1. Ashok Shivappa Laykar	}	
Age 42 years, Occ:	}	
Transport/Travels	}	
R/o. Ward No.10, House No. 1245,	}	
Laykar Mala, Ichalkaranji,	}	
Tal. Ichalkaranji, District Kolhapur,	}	
Presently residing at Ganesh Nagar,	}	
4th Lane, below Kadam Textile,	}	
near O.K. Jents Parlor, Ichalkaranji,	}	
District Kolhapur.	}	
	}	
2. The New India Assurance Co. Ltd.	}	
Divisonal Office, Kanjar Bank	}	
Building, 2nd Floor, Station Road,	}	
Ichalkaranji, District Kolhapur.	}	
	}	Respondents
	}	[orig.. Opponents]

WITH

FIRST APPEAL NO. 667 OF 2019

Sou. Sunanada Arvind Latavade	}
Age 45 years, Occ. Household/Weaving	}
R/o. Ward No.16, House No.807,	}
Tinbatti Char Rasta Chowk,	}

Ichalkaranji, Tal. Ichalkaranji,
District Kolhapur.

}
}
}Appellant
} [orig.. Claimants]

Versus

1. Shri. Ashok Shivappa Laykar }
Age 42 years, Occ: Transport/Travels }
R/o. Ward No.10, House No.1245, }
Laykar Mala, Ichalkaranji, }
Tal. Ichalkaranji, District Kolhapur, }
Presently residing at Ganesh Nagar, }
4th Lane, below Kadam Textile, }
near O.K. Jents Parlor, Ichalkaranji, }
District Kolhapur. }

2. The New India Assurance Co. Ltd. }
Divisional Office, Kanjar Bank }
Building, 2nd Floor, Station Road, }
Ichalkaranji, District Kolhapur. }

}Respondents
} [Orig. Opponents]

...

Mr. Jayant J. Bardeskar Advocate for the Appellant in both matter.
Mr. P.D. Pise for Respondent No.1.
Mrs. S.S. Dwivedi for Respondent No.2

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CORAM : S. G. DIGE, J.

DATE : 13TH FEBRUARY, 2023.

JUDGMENT :

1. Both these appeals are preferred by the original claimants against the judgment and order passed by Motor Accident Claims Tribunal, Kolhapur (for short "the Tribunal"). These Appeals are out

of the same accident. Hence, I am deciding it by passing common judgment.

2. The issue involved in these Appeals are same i.e. pay and recover order passed by the Tribunal.

3. The learned counsel for Appellant submits that in connected group of matters out of the same accident, i.e. in Motor Accident Claim No. 147 of 2005, the Tribunal has passed pay and recover order but in the Claim Petitions filed by the Appellant, the Tribunal has fixed the liability on the owner of offending vehicle. Hence, requested to allow the Appeals.

4. Learned counsel for the Respondent No.2-Insurance Company vehemently submitted that there was breach of terms of insurance policy. Learned counsel further submits that the facts in the Claim Petition where pay and recover order was passed were different than in the present case. Hence, requested to dismiss the appeal.

5. It is contention of learned counsel for Respondent No. 1 that in the connected group of matters, the Tribunal has passed pay

and recover order, so in the present matter, the same should have been passed, but Tribunal has not given reason why separate orders are passed. Hence, requested to pass appropriate order.

6. I have heard all the learned counsel.

7. The issue involved in these Appeals are pay and recover order. The accident was occurred on 16th September 2002. The Tribunal has observed that there was breach of terms of Insurance Policy. He further observed that pay and recover order cannot be passed as he has no power to pass pay and recover order.

8. Learned counsel for Petitioner has tendered the copy of judgment passed in Claim Petition no. 14 of 2005 passed by the Tribunal out of the same accident. In the said judgment and order, the Tribunal has passed pay and recover order. The said order is not challenged by Insurance Company or the owner of offending vehicle. When the Tribunal has passed pay and recover order in one Claim Petition out of the same accident and the said order is not challenged by the aggrieved parties. The Tribunal ought not to have taken different view in the other Claim Petitions.

9. Hence, I pass following order.

ORDER

- i. Both Appeals are allowed.
- ii. The Respondent No.2-Insurance Company shall pay the compensation as directed by the Tribunal to the Appellants within 8 weeks and shall recover it from the Respondent No.1 i.e. owner of vehicle.
- iii. Appeals are disposed off.

(S. G. DIGE, J.)