

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 124 OF 2021

M/s.HDFC Ergo General Insurance)
 Co. Ltd.,)
 Having its office at 4th floor,)
 Lake City Mall, Kapurbawdi Junction,)
 Majiwada, Thane (W).)

....Appellant
 Org. Opp. No. 2

Versus

1. Kishor Kumar Ratanchand Jain)
 Aged 50 years, OCC-Service,)
 R/at: 1705, Wing-A, 17th floor,)
 Shree Vijay Residency, Chivda Galli,)
 Lalbaug Industrial, Near Lalbaug Raja))
 Ganpati, Parel, Mumbai – 400 012.)

...Org.Applicant

2. Mrs. Asha Shailendra Naik)
 R/at: Shop No.G-60,)
 Fantasia Business Park Premises)
 Co-op. Society Ltd.,)
 Plot No.47, Sector – 30A, Vashi,)
 Navi Mumbai – 400 705.)
 (Owner of M/Taxi No.MH-43-Ad-7448))

....Respondents
 Org. Opp party

Mr. Abhijit Kulkarni, Advocate for the Appellant.

Mr. T. J. Mendon, Advocate for the Respondents.

CORAM : S. G. DIGE, J.

DATE : 1st FEBRUARY 2023.

Judgment :

1. Being aggrieved and dissatisfied with the judgment and order passed by the Motor Accident Claims Tribunal, Mumbai, the appellant – Insurance Company has preferred this appeal.

2. The brief facts of the case are as under :

On 13th June, 2014, the claimant/respondent No.1 (for short "the claimant") was returning to house from his shop on his motorcycle bearing registration No. MH-01-EA-6636. At the relevant time, one tempo bearing registration No. MH-43-AD-7448 came in high speed in rash and negligent manner and gave forcible dash to the motorcycle of the applicant from backside. In the said accident, the claimant sustained injuries. An offence was registered against the driver of the tempo. The claimant filed a claim petition for getting compensation before the Motor Accident Claims Tribunal, Mumbai, (for short "the Tribunal"). The Tribunal has awarded compensation. Against the said judgment and order, this appeal.

3. It is the contention of the learned counsel of the appellant that the disability of the claimant is shown on the higher side though there were only fracture injuries. The accident had occurred due to negligence of the claimant. At the time of the accident, the driver of the offending tempo was not holding valid and effective driving licence but this fact is not considered by the Tribunal. Learned counsel further submits that the offence was registered against the tempo driver for not holding valid and effective driving license. The

Tribunal has awarded excessive and exorbitant compensation. Hence, requested to allow the appeal.

4. It is the contention of learned counsel for the claimant that the claimant has suffered 48% disability due to the said accident. After the accident, he is unable to do any work. The doctor was examined to prove the disability of the claimant. The Tribunal has considered all the aspects and, on that basis, compensation is awarded, which are proper. Hence, requested to dismiss the appeal.

5. I have heard both learned counsel, perused the judgment and order passed by the tribunal.

6. It is the contention of learned counsel for the appellant that at the time of the accident, the driver of the tempo was not holding effective and valid driving license. The appellant has examined its legal officer – DW1- Sagar Gangurde. He has produced information received under Right to Information Act (Exh 37), the certified true copy of the insurance policy (Exh 38) and letter issued to the owner of the offending vehicle (Exh 40) along with postal receipt and track consignment. Exh 37 is the letter

issued to the Additional Chief Metropolitan Magistrate. This letter shows that Section 3/181 of Motor Vehicles Act was added in the offence against the driver of the offending tempo.

7. In my view, mere production of the documents under the Right to Information Act, is not sufficient to prove guilt of driver. The appellant should have examined the person of the concerned Regional Transport Office (RTO) to prove that the driver of the offending tempo was not holding effective and valid driving license. No summons was issued to the RTO officer. Mere adding the section against the driver cannot be a ground to consider that the driver of the offending tempo was not holding a valid and effective driving license unless it was brought on record that he was held guilty under this section by the concerned Court or examining the Investigating Officer, who investigated the said offence. But no efforts are taken by the appellant before the Tribunal to prove this fact. Hence, I do not find any merit in the contention of learned counsel for the appellant that, at the time of the accident, the driver was not holding effective and valid driving license.

8. It is the contention of learned counsel for the appellant

that the accident occurred due to contributory negligence of the claimant. It has come on record that the driver of the offending vehicle gave dash to the backside of the claimant's motorcycle. Moreover, no witness is examined by the appellant to prove the contributory negligence of the claimant. Hence, I do not find any merit in the contention of learned counsel for the appellant that the accident occurred due to contributory negligence. The appeal is devoid of merit, hence, I pass the following order:

ORDER

(I) The appeal is dismissed. No order as to cost.

9. Respondent No.1/original claimant is permitted to withdraw the amount deposited by the appellant along with interest accrued thereon.

10. The statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.

(S. G. DIGE, J.)