

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.197 OF 2021**

Reliance General Insurance Co. Ltd.)
Through its Manager, Mr. Amit Ashwini Sharma)
Having its office at 4th Floor Chintamani Avenue)
Off Western Express Highway,)....Appellant
Near Virwani Industrial Estate,)(Orig. Opp. Party
Goregaon (East), Mumbai 400 063.) No.2)

Versus

1. Shri Najeer Shamshuddin Patel)
Aged 44 years, residing at C/o. Ajara)
Transport, 1320, Lakshmipuri, Kolhapur)

2. Sudarshan Road Carrier)
Galli No.1, Near Apsara Cinema)
Delhi, U.P.Border Chikamberpur)
Ghaziabad (U.P.))....Respondents

(Present Respondent No.1 being original Applicant and present Respondent No.2 being Ori. Opp. Party No.1)

Mr. Rajesh Kanojia i/b. Res Juris, Advocates for the Appellant.
Mr. Jayant J. Bardeskar, Advocate for the Respondent No.1.

CORAM : S. G. DIGE, J.

DATE : 23rd FEBRUARY 2023.

JUDGMENT :

1. Being aggrieved and dissatisfied with the judgment and order passed by the Motor Accident Claim Tribunal, Gadhinglaj (for short "the Tribunal"), the appellant - Insurance Company has preferred this appeal.

2. Learned counsel for the appellant submits that out of the same accident, one claim petition was filed before the Motor Accident Claims Tribunal, Kolhapur. In the said claim petition, the Tribunal has passed pay and recover order. The defense taken by the appellant before the Tribunal at Kolhapur was the same which was taken before the Tribunal at Gadhinglaj. Learned counsel further submits that the order passed by the Tribunal at Kolhapur was challenged before this Court by the appellant - Insurance Company by filing First Appeal No. 1 of 2011. This Court has dismissed the appeal. The said order has attained finality.

3. In the order under challenge, the Tribunal has directed the

appellant to pay compensation of Rs.3,10,000/- fixing the liability on the Insurance Company but in said impugned order, the Tribunal has not passed the order of pay and recover. Hence, requested to allow the appeal.

4. Learned counsel for the respondent No.1/claimant submits that appropriate order be passed.

5. I have heard both learned counsel. Two claim petitions were filed, out of the same accident. One was filed before the Tribunal at Kolhapur being claim petition No.457 of 2008. In the said claim petition, the Tribunal had directed the appellant – Insurance Company to pay compensation of Rs.1,49,800/- and recover it from the owner of offending vehicle. The order passed by the Tribunal was challenged by the appellant before this Court, but the appeal of the appellant has been dismissed. The Tribunal at Gadhinglaj has not passed order of pay and recover. The appellant is praying for pay and recover order.

6. In my view, out of the same accident, the Tribunal at Kolhapur has passed pay and recover order, which is confirmed by

this Court, hence, this Court cannot take a different view and I pass following order :

1. The appeal is partly allowed.
2. The appellant-Insurance Company shall pay compensation of Rs.3,10,000/- as directed by the Tribunal at Gadhinglaj to the claimant along with accrued interest as directed by the Tribunal and recover it from owner-respondent No.2 in the appeal.
3. The claimant is permitted to withdraw the amount deposited by the appellant along with accrued interest thereon.
4. The statutory amount along with accrued interest thereon be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.

The appeal stands disposed of.

7. Pending applications, if any, stand disposed of.

(S. G. DIGE, J.)