

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

FIRST APPEAL NO.1499 OF 2013

United India Insurance Company Ltd.	}	
Motor-Third Party Hub	}	
Union Cooperative Insurance Building	}	
Sir P.M. Road, Fort, Mumbai-400001	}	...Appellant

Versus

1. Mr.Mahesh Chandrakant Marde	}	
R/o. Dhakati Dahanu, Mangel Ali,	}	
Taluka-Dahanu, District-Thane.	}	
 2. Mr.Asif Hussain Shaukat Hussain	 }	
R/o Saban Pura, Amravati	}	...Respondent

Mr.Rahul Mehta i/b KMC Legal Venture, for the Appellant.
Mr.T.J. Mendon, for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3 MAY 2023

JUDGMENT :-

. The issue involved in this Appeal is that the Claimant was a gratuitous passenger in offending vehicle, in spite of that the Motor Accident Claims Tribunal, Palghar awarded compensation which is erroneous.

2. It is contention of learned counsel for the Appellant-Insurance Company that the Tribunal failed to appreciate that the Claimant in the present case had no business to travel in a goods vehicle. The Appellant is not liable to pay any compensation as the Claimant was traveling as a gratuitous passenger.

3. The learned counsel further submits that the occupation of Claimant was shown in the Claim Petition as carpenter. He had gone for purchasing wood along with Prabhakar Davane & his son Sanjay. If he was carpenter then how the Claimant can be considered as owner of the goods? But this fact is not considered by the Tribunal and has passed pay and recover order which is erroneous. Hence, requested to allow the Appeal.

4. It is contention of learned counsel for the Claimant that the Claimant has suffered 20% permanent partial disability in the said accident. The Claimant is brother-in-law of Prabhakar Davane. The Claimant had gone with Prabhakar Davane for purchasing wood for constructing the boat/trawler of Prabhakar Davane. After purchasing the said woods he was traveling with Prabhakar Davane in the offending truck. So the Claimant cannot be considered as gratuitous passenger. The accident occurred due to negligence of the driver of the offending truck. The Tribunal has considered all the aspects while awarding compensation. The

pay and recover order passed by the Tribunal is legal and valid. No interference is required in it.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Palghar (for short 'The Tribunal').

6. It is case of the Claimant that he is brother-in-law of Prabhakar Janardan Davne, he had decided to built the boat/trawler for his business of fishing. For that purpose, the Claimant along with Prabhakar Davane, his son Sanjay Davane had gone to Lasalgaon for purchasing the wood. After purchasing the wood, it was loaded in the truck bearing registration No.MH-04/H-1834 (hereinafter referred as 'offending truck') and they were returning back by the said truck on 14 January 2009. When they were returning back at about 7.00 p.m., the driver of the offending truck drove the same in a negligent manner in high and excessive speed, without taking into consideration the condition of the road and on a sloppy turn near village Dengachimet he gave dash to the road side crack (Darad). Due to said accident the Claimant, Prabhakar Davan and his son Sanjay had sustained injuries. Prabhakar had sustained severe injuries. The Claimant was taken to Cottage Hospital at Jawhar & thereafter he moved to K.E.M. Hospital, Mumbai, and he took treatment there upto 15th January 2019 and then he was admitted in Sai-deep Hospital,

Dahanu. There he took treatment as indoor patient. The offence was registered against driver of the offending truck.

7. It is contention of learned counsel for the Appellant that the Claimant cannot be considered as owner of goods. He was traveling with his brother-in-law in the offending truck and his occupation was shown as carpenter. While dealing with this issue the Tribunal has observed that in present case Claimant had gone with the deceased Prabhakar and his son Sanjay for purchasing the wood being a carpenter. According to the Claimant work of constructing the boat was assigned to him by the Prabhakar. Evidence of the Claimant further shows that after purchasing the wood they were returning by the truck in which said wood was loaded. What it shows that Act of the Claimant of traveling by the truck was natural and *bond fide*. If this is the position then in view of the law laid down in *High Court United India Insurance Co. Ltd. V/s. Sindhubai & Ors. 1(2011) ACC 357 (Bombay)* pay and recover order can be passed. On that basis Tribunal has passed pay and recover order. I do not find any infirmity in it as the Claimant had gone with Prabhakar as an expert and Prabhakar was brother-in-law of Claimant, so being close relative of Prabhakar and expert in wood cutting, as the Claimant was carpenter, it was natural that the Claimant had accompanied the Prabhakar. The pay and recover order passed by the Tribunal is appropriate.

8. In view of above I pass following order.

ORDER

(i) The Appeal is dismissed. No order as to cost.

(ii) The Claimant is permitted to withdraw deposited amount along with accrued interest thereon.

(iii) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it as per Rule.

(iv) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)