

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 534 OF 2016

	The New India Assurance A Company having its registered Office at MROL, New India Bhavan, 34/38, Bank Street, Fort, Mumbai – 400 023	...	Appellant
	versus		
1	Suresh Sitaram Kahandane Age 50 yrs., Occu. Business Residing at A. P. Kalamb Taluka Ambegaon Dist. Pune		
2	Shri. Santosh Kanade Age Adult, Occu. Business Residing at A-17/11, APMC Housing Complex, Sector 14, Vashi, Navi Mumbai – 400 703	...	Respondents

Ms. Shalini Shankar, Advocate for the Appellant.

Mr. Aniket Nangare i/b. Mr. Rohit S. Gangawane, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 26th MARCH, 2024.

Oral Judgment :

1. The issue involved in this appeal is, at the time of the accident, the driver of the offending vehicle was under the influence of liquor.

2. It is contention of learned counsel for the appellant that, at the time of the accident, the driver of the offending vehicle was under the influence of the liquor. A charge-sheet was filed against him but these facts are not considered by the Tribunal. Learned counsel further

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submitted that interest is granted on higher side @ 9% per annum, it be reduced. Hence, requested to allow the appeal.

3. Learned counsel for the respondent No.1/claimant submitted that the issue raised in appeal by the appellant-insurance company before this Court was not taken before the Tribunal. Moreover, no evidence was led before the Tribunal that the driver of the offending vehicle was under the influence of liquor. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Pune (for short "the Tribunal").

5. Though appellant-Insurance Company has raised the issue before this Court that, at the time of the accident, the driver of the offending vehicle was under the influence of liquor but this defense was not taken before the Tribunal. Moreover, to prove the defense, no evidence was produced before the Tribunal, hence, I do not see merit in it.

5.1. The Tribunal has awarded interest @ 9%, in my view, it is on higher side, it should be 7.5% per annum.

6. In view of above, I pass following order :

ORDER

1. The appeal is partly allowed.

2. The claimant is entitled for interest @ 7.5% on the compensation awarded by the Tribunal.
3. The appellant/Insurance Company is permitted to withdraw excess interest amount, out of the deposited amount.
4. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
7. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)