

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

FIRST APPEAL NO. 923 OF 2008

United India Insurance Company Ltd.)
Stadium House, 4th Floor, V. N. Road,)
Churchgate, Mumbai – 400 020)....Appellant
(Orig. Insurer)

Versus

1. Subash Dattu Patil,)
Age: 30 years,)
Residing at Motilal Nehru Nagar,)
Kokani Agar, Opp. Sector No.7,)
room No. g. S. 41, Antop Hill,)
Mumbai-400 037)....Org. Applicant

2. Shankar K. Odiar,)
Ramchandra Lane, Kacpada No.2,)
Zopadpatti, Malad, Mumbai)....Respondents.

Owner of Motor Tempo No. MH.02.t.6647) (Org. Opp. Party)

Mr. Rahul Mehta i/b KMC Legal Venture, Advocate for the Appellant.
Mr. T. J. Mendon, Advocate for the Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th JANUARY, 2024.

Oral Judgment. :

1. The issues involved in this appeal are that the Claimant was

gratuitous passenger in the offending vehicle and amputation and disability of the Claimant is considered on higher side.

2. It is contention of learned counsel for the Appellant that deceased was travelling in the goods vehicle, as a gratuitous passenger but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered permanent physical disability of the deceased at 60% without any evidence on record, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents, that the Claimant was travelling in the vehicle as a representative of owner of the goods. He cannot be termed as a gratuitous passenger. Moreover, no evidence was led by the Appellant/Insurance Company before the Tribunal to prove that the Claimant was gratuitous passenger. Learned counsel further submitted that due to accidental injuries, right hand of the Claimant has amputated. The disability considered by the Tribunal is proper and no interference is required in it.

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

5. To prove the defense that the Claimant was gratuitous passenger in the offending vehicle, no evidence was led by the Appellant/Insurance Company. It is Claimant's case that the Claimant was going to deliver the goods of the company to Taj caterers at Sahar Airport. After delivering the goods while returning, the said tempo turtled near Ambassador Hotel Circle as, it was in high speed and the driver took sudden turn, the Claimant sustained serious injuries. The Claimant has proved that the Claimant was sitting in the offending vehicle as a representative of his owner but the Appellant/Insurance Company has failed to prove the defense taken by them. Hence, I do not see merit in the contention of Appellant/Insurance Company that the Claimant was gratuitous passenger in the offending vehicle. It has come on record that doctor has given 60% permanent physical disability, the Tribunal has considered it as 60% permanent physical disability, as right hand of the Claimant is amputated due to accidental injuries. The disability considered by the Tribunal is proper. I do not find infirmity in it.

6. Considering the above reasons Appeal is devoid of merit and, I pass following order:

ORDER

- i. Appeal is dismissed.
 - ii. The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 - iii. 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 stand disposed of.

(SHIVKUMAR DIGE, J.)