

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2665 OF 2006
WITH
CROSS OBJECTION (ST) NO.27376 OF 2006

United India Insurance Co. Ltd.	}	
MRO, Stadium House, 5 th Floor,	}	(Org. Insurer)
Veer Nariman Road, Mumbai-400 020	}	...Appellant

Versus

1. Mr.S. Bhargavan Pillai	}	(Respondent
Age-47 years,	}	No.1 Org.
R/At Flat No.8, Sandhya Building, Chheda	}	Applicant)
Nagar, Chembur, Mumbai-400 089.	}	

2. Mr.Manjitsingh Kartarsingh Obhan	}	(Respondent
Building No.15, Room No.11, LL-14, Nerul,	}	No.2 Org.
Sector No.II, Navi Mumbai.	}	Opposite Party)
	}	...Respondents

Mr.Sanjay Krishnan i/b Leges Consults, for the Appellant.
Mr.Kunal Kumbhat a/w Mr.Nitiraj Shirke i/b Ms.Sunanda
Kumbhat, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th MARCH 2024

ORAL JUDGMENT :-

. This Appeal is preferred by the Appellant-Insurance
Company against the judgment and order passed by the Motor

Accident Claims Tribunal, Mumbai ('The Tribunal' for short).

2. The Claimant has also filed Cross-Objection. As Appeal and Cross-Objection are against same judgment and order, I am deciding it by this common judgment.

3. It is contention of the learned counsel for the Appellant that, accident occurred due to sole negligence of the Claimant who was riding the motorcycle, but this fact is not considered by the Tribunal. The learned counsel further submits that in connected Claim Petition filed by pillion rider out of the same accident the Tribunal has observed that both drivers are equally responsible for the accident. But while passing the order, the Tribunal has fixed negligence on the driver of the offending vehicle. The Tribunal should have considered the contributory negligence of the Claimant, but it has not been done. Hence, requested to allow the Appeal.

4. The learned counsel for the Respondent-Claimant submits that offence was registered against the driver of the offending vehicle. To prove the negligence of the Respondent-Claimant driver of the offending vehicle did not step into witness

box. In the Claim Petition of the Claimant, the Tribunal has not observed anything about negligence of the Claimant. The observations of the Tribunal in other Claim Petition cannot be a ground to consider contributory negligence of the Claimant. The learned counsel further submitted that the Tribunal has awarded interest on the compensation amount from the date of the passing order, it should be from the date of the filing of the Claim Petition. Hence requested to dismiss the Appeal and allow the Cross-objection.

5. I have heard both learned counsel. Perused judgment and order passed by the Tribunal.

6. Admittedly, the offence was registered against the driver of the offending vehicle. In the present Claim Petition the Tribunal has observed that accident occurred due to sole negligence of the driver of the offending vehicle. Moreover, the driver of the offending vehicle did not enter into the witness box, to prove the negligence of the Claimant. The observations in the other Claim Petition cannot be a ground to consider the contributory negligence of the Claimant. Hence, I do not see

merit in the contention that in other Claim Petition the Tribunal has observed that there was contributory negligence of the Claimant. While awarding compensation the Tribunal has awarded interest from the date of judgment and order, it should be from filing Claim Petition.

7. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Cross-Objection is allowed.
- (iii) The Claimant is entitled for the compensation amount @ 7.5% interest per annum from the date of the filing of Claim Petition till realization of the amount.
- (iv) The Claimant is permitted to withdraw deposited amount alongwith accrued interest.
- (v) The statutory amount in First Appeal No.2665 of 2006 alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.
- (vi) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)