

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

FIRST APPEAL STAMP NO. 2367 OF 2024

WITH

INTERIM APPLICATION NO. 10851 OF 2024 (withdrawal)

Dadabhau Namdeo Dafal ... Applicant

IN THE MATTER BETWEEN

United India Assurance Co. Ltd. ... Appellant

Versus

Dadabhau Namdeo Dafal and Ors. ... Respondents

WITH

INTERIM APPLICATION NO. 872 OF 2024 (delay)

IN

FIRST APPEAL STAMP NO. 2367 OF 2024

WITH

INTERIM APPLICATION NO. 873 OF 2024 (stay)

IN

FIRST APPEAL STAMP NO. 2367 OF 2024

United India Assurance Co. Ltd. ... Applicant/
Appellant

Versus

Dadabhau Namdeo Dafal and Ors. ... Respondents

.....

Mr. Amol Gatne, Advocate for the Appellant.

Mr. D. D. Shinde, Advocate for Respondent No.1 in FA(St) 2367/2024 and
for Applicant in IA/10851/2024.

CORAM : ARUN R. PEDNEKER, J.

DATED : 29th JULY, 2024.

P.C. :

1. Heard learned counsel for the parties.
2. The appeal is filed on the ground of contributory negligence so

also breach of insurance policy as the driver of the insured vehicle was not holding driving licence so also quantum of compensation.

3. The injured is a teacher and whose income is Rs.18,400/- p.m. based on the letter dated 18.12.2009 issued by the Block Education Officer indicating net salary of claimant at the time of accident as per 6th Pay Commission was Rs.18,400/- p.m. Considering the said document at Exh. 133 he would be entitled to Rs.18,000/- p.m. However, income on the date of his accident was Rs.14,044/-. In the instant case the chargesheet has been filed against the driver of the offending truck and not against the motorcycle driver. No other evidence is placed on record as regards the contributory negligence.

4. In view of the same, the applicant is permitted to withdraw 75% of the amount which is deposited before the Tribunal along with accrued interest thereon till date subject to filing of usual undertaking to the satisfaction of the Presiding Officer of the Tribunal.

5. The Interim Application No. 10851 of 2024 is allowed and disposed of.

INTERIM APPLICATION NO. 872 OF 2024

6. For the reasons stated in the interim application, the application for condonation of delay of 83 days in filing the appeal is condoned and Interim Application No. 872 of 2024 is disposed of.

INTERIM APPLICATION NO. 873 OF 2024

7. The stay of the impugned order granted earlier stands confirmed till the final disposal of the appeal. Interim application No. 873 of 2024 is disposed of.

8. The appeal is admitted.

9. Call R & P. On admission, Advocate Mr. Shinde waives notice for respondent No.1.

(ARUN R. PEDNEKER, J.)

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KILAJE

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by SONALI
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