

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.9330 OF 2024
IN
FIRST APPEAL NO.107 OF 2024

Swati Atul Shende & Ors. Applicants

V/s.

IFFCO-TOKIO General Insurance Co. Respondents
Ltd., Thr. Its Manager & Anr.

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Ms.Rina Kundu, for the Applicants.

Mr.Abhijit P. Kulkarni a/w Ms.Sweta Shah & Mr.Krushna
Jaybhay, for the Appellant in FA.

CORAM : ARUN R. PEDNEKER, J.

DATE : 23rd JULY 2024

P.C:-

. Heard learned counsel for the parties.

2. The learned counsel for the Appellant submits that, the Appellant challenges the judgment of the Tribunal primarily on the ground that the non-involvement of the vehicle. He submit that, the accident has occurred on 18th August 2017 and the FIR was lodged on 22nd August 2017. Wherein the FIR is registered against the unknown vehicle and that the unknown

vehicle had dashed the victim while he was riding on a motorcycle. The accident is not disputed by the Insurance Company, however, it is disputed that the insured vehicle was involved in the accident.

3. In the instance case the Tribunal has noticed that there is charge sheet filed against the owner of the insured vehicle. Also evidence on record suggest that the intimation was received by the Police Constable as regard the tempo which had dashed the motorcycle. It is further noticed that the informant's name is not mentioned and primarily the Tribunal has taken into consideration that the information is received by the Constable as regards the involvement of the tempo. Thereafter, the investigation is concluded and charge sheet is filed and the owner of the insured vehicle has not stepped into the witness box denying the accident. A such on preponderance of probabilities the Tribunal has held that the tempo was involved in the accident. *Prima facie* the finding cannot be said to be perverse.

4. In view of the same, I would permit the Applicant/Claimant to withdraw 50% of the amount as directed

by the Tribunal alongwith accrued interest in the proportion mentioned in the order of the Tribunal, subject to an undertaking to the satisfaction of the Presiding Officer of the MACP, Court.

5. The Application for withdrawal of amount is allowed and disposed of.

FIRST APPEAL NO.107 OF 2024

6. The Appeal is admitted.

7. Call Record and Proceedings.

(ARUN R. PEDNEKER, J.)