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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 350 OF 2024

**THE DIVISIONAL MANAGER
NEW INDIA ASSURANCE CO.LTD.
VERSUS
BHARAT RADHAKISAN DATIR AND OTHERS.**

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Mr. A.G. Chaudhari, Advocate for appellant
Mr. R.B. Dhakane, Advocate for respondents.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 8TH JANUARY, 2025.

ORDER:-

1. The appellant/insurer impugns the judgment and award dated 20.9.2023 passed by the Motor Accident Claims Tribunal, Shrirampur, Dist. Ahmednagar in M.A.C.P. No. 262 of 2019.
2. Respondent/claimant suffered injury in motor vehicle accident dated 26.5.2019 while he was proceeding on motor cycle bearing No. MH 17/CE 2594 alongwith his brother Babasaheb. He contends that insured truck bearing Registration No. MP-09/HH8150 came from opposite direction and dashed against the motorcycle. Consequently, he suffered injuries causing permanent disablement. The claimant raised claim for compensation under Section 166 of the Motor Vehicles Act against owner and insurer of the truck.

3. Respondent - Insurance company contested the claim disputing involvement of the truck owing to delay in registration of crime. They also denied contention regarding permanent disablement and loss of earning. The Tribunal framed issues, recorded evidence of parties and finally concluded that accident occurred due rash and negligent driving of insured truck, eventually passed an award of Rs. 5,81,470/- alongwith interest @ 6% p.a. against owner and insurer.

3. Mr. Choudhari, learned advocate for appellant/Insurer submits that immediately after accident applicant was admitted to Ahmednagar Medical College and hospital. The history of accident was recorded indicating that claimant suffered injuries due to fall from the two wheeler. There is no reference of involvement of insured truck in the accident. However on the next day FIR is lodged alleging involvement of the insured truck. He would further invite attention of this court to evidence of CW-2 Swapnil Kondiram Kamble, who admitted that he is not witness to the accident, claimant suffered injuries due to fall from the motorcycle and which was never dashed by the truck. He would, therefore, urge that the insured vehicle has been falsely implicated and seeks dismissal of the claim.

3. Having considered the submissions advanced and on perusal of the record and proceeding, it can be gathered that the accident in question took place at about 3.00 p.m. on 26.5.2019 while claimant was riding on motorcycle along with his brother Babasaheb. It is therefore difficult to accept the contention of the appellant/insurer that FIR was delayed. In deference to the FIR, spot panchanama was carried, wherein, there is reference of the insured truck being the offending vehicle. The

claimant deposed before the court and narrated the incident depicting involvement of the truck and negligence of the truck driver in the accident. Claimant has further relied upon the evidence of Amit Rathod, Police Officer, who states that after due investigation he had filed charge sheet against the truck driver. No infirmity can be found in claimants evidence on the point of involvement of truck.

4. So far as the stipulation in history of accident recorded by hospital at the time of claimants admission stating that claimant suffered injury due to fall from two wheeler, that itself would not be sufficient to discard claimants case as regards involvement of the truck. There is no material as on what basis history has been recorded in injury report at the hospital. No evidence in this regard has been brought by the insurer. The person from hospital is not examined. The source of information recorded in hospital record is not discernible. Hence insurer cant make much capital of one line stipulation appearing in hospital record.

6. As regards the admission of CW-2 is concerned, he specifically states that he is not an eye witness of the accident. He has no personal knowledge of the accident. Therefore, his admission in support of non involvement of insured Truck in accident would not assume significance in facts of the case. In that view of the matter, no fault can be found in the finding recorded by the Tribunal on the point of involvement of the insured truck.

7. So far as quantum of compensation is concerned, claimant proved 20 % disability suffered by him through evidence of Dr. Ashish Somani, who issued the Certificate of Disability on clinical examination

of the claimant. The tribunal considered notional income of the claimant @ Rs.9,000/- p.m. as he was a Labour. Eventually claimant would suffer commensurate loss of earning. Hence, no fault can be found with the assessment of compensation towards loss of future earning as well as on other permissible heads.

8. For reasons as recorded, no case is made out for interference in the impugned judgment and award in appellate jurisdiction of this court. Hence Same is dismissed. Civil application No. 1185 of 2024 for stay stands disposed of. Another Civil Application No. 8612 of 2024 for withdrawal of the amount filed by claimants, stands allowed and disposed of. The applicant is permitted to withdraw the amount in terms of the award passed by the Tribunal alongwith interest accrued thereon @ 6% p.a.

[S.G. CHAPALGAONKAR, J]

grt/-