2025:BHC-AUG:29546

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 FIRST APPEAL NO. 1319 OF 2016

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. THR LEGAL EXECUTIVE
VERSUS
PRATAP NARAYAN CHAVAN AND ANR
...

Mr. M. R. Deshmukh, Advocate for Appellant
Mr. M. M. Bhokarikar, Advocate for Respondent No.1
...

WITH
FIRST APPEAL NO. 1320 OF 2016

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. THR LEGAL EXECUTIVE
VERSUS
SURESH NARAYAN CHAVAN AND ANR

WITH
CIVIL APPLICATION NO. 4109 OF 2016
IN FA/1320/2016

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. THR LEGAL EXECUTIVE
VERSUS
SURESH NARAYAN CHAVAN AND ANR

WITH
CIVIL APPLICATION NO. 4110 OF 2016
IN FA/1319/2016

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. THR LEGAL EXECUTIVE
VERSUS
PRATAP NARAYAN CHAVAN AND ANR

WITH
CROSS APPEAL NO. 2 OF 2018
IN FA/1320/2016

SURESH NARAYAN CHAVAN
VERSUS
THE BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. THR LEGAL EXECUTIVE AND ANR
...

Mr. M. M. Bhokarikar, Advocate for Appellant
Mr. M. R. Deshmukh, Advocate for Respondent No.1

WITH
CIVIL APPLICATION NO. 12357 OF 2018
IN X-APL/2/2018

SURESH NARAYAN CHAVAN
VERSUS
THE BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. THR LEGAL EXECUTIVE AND ANR

WITH
CROSS APPEAL NO. 3 OF 2018
IN FA/1319/2016

PRATAP NARAYAN CHAVAN
VERSUS
THE BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. THR LEGAL EXECUTIVE AND ANR

...

Mr. M. M. Bhokarikar, Advocate for Appellant

...

WITH
CIVIL APPLICATION NO. 12354 OF 2018
IN X-APL/3/2018

PRATAP NARAYAN CHAVAN
VERSUS
THE BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. THR LEGAL EXECUTIVE AND ANR

...

CORAM : AJIT B. KADETHANKAR, J.
DATE : 16.10.2025

PER COURT :-

FIRST APPEAL NO. 1319 OF 2016

1. Feeling aggrieved by the order dated 01.02.2016 passed by the learned Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim

Petition No.461/2009, the original respondent no.2/Insurance Company has preferred the First Appeal under Section 173 of Motor Vehicle Act, 1988.

Brief facts of the case :-

(i) It was contended that on 08.08.2009 the respondent no.1 was riding on a motorcycle bearing No.MH-19-AT-4645 from Jalgaon towards Pathrad. It was further contended that a truck bearing No.MH-29-M-301 gave dash to the bike on which respondent no.1 was riding and it resulted into permanent disability to respondent no.1.

(ii) The claimant/respondent no.1 filed a petition before the Tribunal claiming compensation of Rs.5 Lakh to be recoverable jointly and severally from the owner and insurer (the appellant herein).

(iii) It was a defence of the appellant/Insurance Company that the truck driver was not holding a valid and effective driving license on the date of the accident. On this count, besides other defences, the appellant/Insurance Company sought exoneration from the liability to indemnify the insured owner.

(iv) During the course of hearing, the Insurance Company examined its official who tendered certain information received from the concerned RTO wherein it was revealed that the copy of the license was placed on record by the claimant pertaining to driving license of driver was fake. The appellant/Insurance Company made every endeavor to bring on record that the said driving license suggested and revealed by the claimant did not stand in the name of the driver of the insured vehicle.

(v) The appellant/Insurance Company deposed before the learned Tribunal through its witness that as per the record of the RTO, Chandrapur, the numbered license that was shown to have been issued in the name of the truck driver was in fact issued in the name of one Dipak S. Varutkar and as such it was proved that the license that was placed on record pertaining to the truck driver was absolutely fake one. With this, the appellant/Insurance Company sought exoneration from the liability to indemnify the insured owner and prayed to dismiss the claim to the extent of the appellant/Insurance Company.

Findings of the Tribunal :-

2. After hearing the parties, the learned Tribunal quantified the award to the tune of Rs.1,85,000/- to be recoverable jointly and severally from the owner and insurer.

3. So far as the legal defence raised by the Insurance Company was concerned, the learned Tribunal discarded such defence holding that in any event the Insurance Company was not absolved from the liability to indemnify the insured owner. As such the Insurance Company is in this Court against the findings rendered by the learned Tribunal so far as the license of the truck

driver is concerned.

Submissions in the Appeal :-

4. Mr. Deshmukh, learned counsel for the appellant/Insurance Company fairly placed on record copy of the judgment rendered by the Hon'ble Supreme Court in the case of ***Rishi Pal Singh vs. New India Assurance Co. Ltd. And others reported in 2022 SCC Online SC 2119.***

5. A profitable reference can be made to Paragraph No.11 of the said judgment which reads as follow :

> *"11. The owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuineness of the driving license before appointing a driver. Therefore, once the owner is satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving license issued to the driver."*

Conclusion :-

6. In view of the settled position of law laid down by the Hon'ble Supreme Court, it has become trite law that even if the driver of the insured vehicle might be holding a fake license, the vehicle owner is not expected to verify the genuineness of the driving license before engaging such driver. Therefore, the liability of the Insurance Company is not absolved from its

liability to indemnify the insured owner.

7. In view of this I do not find any reason to interfere into the findings rendered by the learned Tribunal. The appeal is devoid of merit and deserves to be dismissed. Hence I pass the following order :-

ORDER

A. The First Appeal No.1319 of 2016 is dismissed without any order as to costs.

B. In view of the dismissal of the First Appeal, the legal representatives of the deceased/claimant are entitled to withdraw the amount deposited by the Insurance Company in this Court with accrued interest thereon.

C. Pending civil applications, if any, also stand disposed of.

FIRST APPEAL NO. 1320 OF 2016

1. Feeling aggrieved by the order dated 01.02.2016 passed by the learned Motor Accident Claims Tribunal, Jalgaon, in Motor Accident Claim Petition No.460/2009, the original respondent no.2/Insurance Company has preferred the First Appeal under Section 173 of Motor Vehicle Act, 1988.

Brief facts of the case :-

(i) It was contended that on 08.08.2009 the claimant/insured was riding on a motorcycle bearing No.MH-19-AT-4645 as a pillion rider from Jalgaon towards Pathrad. It was further contended that a truck bearing No.MH-29-M-301 gave dash to the bike on which the claimant/insured was riding as a pillion rider and it resulted into permanent disability.

(ii) The claimant/respondent no.1 filed a petition before the Tribunal claiming compensation of Rs.5 Lakh to be recoverable jointly and severally from the owner and insurer (the appellant herein).

(iii) It was a defence of the appellant/Insurance Company that the truck driver was not holding a valid and effective driving license on the date of the accident. On this count, besides other defences, the appellant/Insurance Company sought exoneration from the liability to indemnify the insured owner.

(iv) During the course of hearing, the Insurance Company examined its official who tendered certain information received from the concerned RTO wherein it was revealed that the copy of the license was placed on record by the claimant pertaining to driving license of driver was fake. The appellant/Insurance Company made every endeavor to bring on record that the said driving license suggested and revealed by the claimant did not stand in the name of the driver of the insured vehicle.

(v) The appellant/Insurance Company deposed before the learned Tribunal through its witness that as per the record of the RTO, Chandrapur, the numbered license that was shown to have been issued in the name of the truck driver was in fact issued in the name of one Dipak S. Varutkar and as such it was proved that the license that was placed on record pertaining to the truck driver was absolutely fake one. With this, the appellant/Insurance Company sought exoneration from the liability to indemnify the insured owner and prayed to dismiss the claim to the extent of the appellant/Insurance Company.

Findings of the Tribunal :-

2. After hearing the parties, the learned Tribunal quantified the award to the tune of Rs.1,75,000/- to be recoverable jointly and severally from the owner and insurer.

3. So far as the legal defence raised by the Insurance Company was concerned, the learned Tribunal discarded such defence holding that in any event the Insurance Company was not absolved from the liability to indemnify the insured owner. As such the Insurance Company is in this Court against the findings rendered by the learned Tribunal so far as the license of the truck driver is concerned.

Submissions in the Appeal :-

4. Mr. Deshmukh, learned counsel for the appellant/Insurance Company fairly placed on record copy of the judgment rendered by the Hon'ble Supreme Court in the case of ***Rishi Pal Singh vs. New India Assurance Co. Ltd. And others reported in 2022 SCC Online SC 2119.***

5. A profitable reference can be made to Paragraph No.11 of the said

judgment which reads as follow :

> *"11. The owner of the vehicle is expected to verify the driving skills and not run to the licensing authority to verify the genuineness of the driving license before appointing a driver. Therefore, once the owner is satisfied that the driver is competent to drive the vehicle, it is not expected from the owner thereafter to verify the genuineness of the driving license issued to the driver."*

Conclusion :-

6. In view of the settled position of law laid down by the Hon'ble Supreme Court, it has become trite law that even if the driver of the insured vehicle might be holding a fake license, the vehicle owner is not expected to verify the genuineness of the driving license before engaging such driver. Therefore, the liability of the Insurance Company is not absolved from its liability to indemnify the insured owner.

7. In view of this I do not find any reason to interfere into the findings rendered by the learned Tribunal. The appeal is devoid of merit and deserves to be dismissed. Hence I pass the following order :-

ORDER

A. The First Appeal No.1320 of 2016 is dismissed without any order as to costs.

B. In view of the dismissal of the First Appeal, the claimant is permitted to withdraw the amount deposited by the Insurance

Company in this Court with accrued interest thereon.

C. Pending civil applications, if any, also stand disposed of.

CROSS APPEAL NO. 3 OF 2018 IN FA/1319/2016

1. Mr. M. M. Bhokarikar, learned counsel for the applicant would submit that the compensation granted by the learned Tribunal is extremely inadequate. He would submit that the learned Tribunal has not granted any compensation on the basis of the loss of earning capacity and the disability sustained by the appellant/claimant in the Cross Appeal. He would submit that an amount of Rs.1,85,000/- is too meagre for the case that was set up by the claimant in the Trial Court.

2. Per contra, Mr. M. R. Deshmukh, learned counsel appearing for the Insurance Company would submit that the Tribunal has rightly awarded compensation in accordance with the law prevailing at the relevant time. He would further submit that the claimant failed to prove the extent of permanent disability and its impact on earning capacity. Therefore, no case for enhancement is made out and the Cross Appeal deserves to be dismissed.

3. With the able assistance of the learned counsel for both parties, I have perused the Record and Proceeding. Since the appellant in the Cross Appeal seeks enhancement of compensation, a detailed scrutiny of the Tribunal's observations is warranted.

4. It could be beneficial to refer to the observation of the learned Tribunal at Paragraph Nos.17 to 20 and 33 which are reproduced as follows :

"17. It is a settled principle of law, ruled by the Hon'ble Apex Court, while dealing with the case of Rajesh Kumar Vs. Yudhvir Singh and another [2008 ACJ 2131] that, without examining Medical Officer, who issued medical certificate, it is inadmissible in evidence. Apart from this, the PDCerificate must be issued in the prescribed format – Compo B, as per the provisions of Motor Vehicles Rules.

18. No doubt, in order to prove the contentions raised by the claimant, he has examined CW-2, Dr.Anil Jagannath Khadke, an Orthopedic Surgeon, practicing at Jalgaon, at Exh.39. He produced and proved PDCertificate issued by him under seal of his hospital and signature, at Exh.43, show that, claimant had sustained injury to the right knee joint, to the extent of 45% of the part.

19. In his cross-examination by the Advocate for respondent No.2, he admitted that, the injured claimant admitted in his hospital as indoor patient for the period of 1 month, however, the requisite papers are not produced. He is unable to say, due to injuries sustained towards right knee joint to the claimant, how much physical disability would be there. According to him, there may be some disability due to the injuries sustained.

20. Admittedly, the PDC produced in the prescribed format Comp B is not verified by the Medical Board attached to the Civil Hospital, at Jalgaon. No doubt, injury certificate previously

> *issued by CW-2, at Exh.27 show that claimant sustained grievous injuries. So, I have no hesitation to answer issue No.2, partly in the affirmative.*
>
> *33. Be that as it may, CW-2 under cross-examination, aforementioned admitted that, he cannot estimate the actual disability sustained to the claimant as well as unable to say whether inserted rod and screw removed by the claimant in another hospital or through another dispensary, raising operation or not."*

5. In light of the above, it is evident that the claimant failed to establish through cogent and reliable evidence, the extent of disability and the loss of earning capacity. The Tribunal has rightly observed that in the absence of any verified disability certificate or medical evidence, no further enhancement could be justified. In the light of that, I find that the learned Tribunal has not committed any error in quantifying the award amount of Rs.1,85,000/-.

6. Hence, the following order :-

ORDER

A. The Cross Appeal No.3 of 2018 stands dismissed.

B. No order as to costs.

CROSS APPEAL NO. 2 OF 2018 IN FA/1320/2016

1. This Cross Appeal is filed by the original claimant seeking

enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal. Mr. Bhokarikar, learned counsel for the appellant would submit that the compensation awarded to the claimant by the Tribunal, amounting to Rs.1,75,000/-, is meagre and inadequate and thus cannot be considered just and proper.

2. Mr. Bhokarikar, learned counsel would submit that the learned Tribunal failed to apply the correct legal parameters while assessing compensation in an injury claim. He submitted that the Tribunal erred in not granting appropriate compensation under the head of loss of earning capacity, which was allegedly sustained by the claimant due to the injuries suffered in the accident.

3. Per contra, Mr. M. R. Deshmukh, learned counsel appearing for the Insurance Company would submit that the Tribunal has rightly awarded compensation in accordance with the law prevailing at the relevant time. He would further submit that the claimant failed to prove the extent of permanent disability and its impact on earning capacity. Therefore, no case for enhancement is made out and the Cross Appeal deserves to be dismissed.

4. With the able assistance of the learned counsel for both parties, I have perused the Record and Proceeding. Since the appellant in the Cross Appeal seeks enhancement of compensation, a detailed scrutiny of the

Tribunal's observations is warranted.

5. It could be beneficial to refer to the observation of the learned Tribunal at Paragraph Nos.14 to 18 and 33 which are reproduced as follows :

> *"14. It is a settled principle of law, ruled by the Hon'ble Apex Court, while dealing with the case of Rajesh Kumar Vs. Yudhvir Singh and another [2008 ACJ 2131] that, without examining Medical Officer, who issued medical certificate, it is inadmissible in evidence. Apart from this, the PDCerificate must be issued in the prescribed format – Compo B, as per the provisions of Motor Vehicles Rules.*
>
> *15. No doubt, in order to prove the contentions raised by the claimant, he has examined CW-2, Dr.Anil Jagannath Khadke, an Orthopedic Surgeon, practicing at Jalgaon, at Exh.41. He produced and proved PDCertificate issued by him under seal of his hospital and signature, at Exh.45, show that, claimant had sustained injury to the right knee joint, to the extent of 5% of the part.*
>
> *16. In his cross-examination by the Advocate for respondent No.2, he admitted that, the said disability likely to be cured after lapse of time. In fact, pleadings of the claimant show that, he was permanently disabled under accident (See para No.14(a) (c)), howerver there is variance with the pleadings and evidence, for the reason best known to the claimant only.*
>
> *17. It is ruled by the Apex Court, in the case of G.Dhanashekhar vs. M. D. Metropolitan Transport Corporation Ltd. (2014(2) ABR 686) that, principle governing fixation of*

compensation for functional disability, it has to be borne in the mind that, it cannot be uniformally applied, it would depend on the impact cause by the injury on the victim's profession/career. To what extent, the career of the victim affected, thereby his regular income is reduced or dried up will depend on the facts and circumstances of each case. There may be even situations where the physical disability does not involve any functional disability at all.

18. Be that as it may, CW-2 under cross-examination clearly admitted that, the injury sustained is likely to be cured after lapse of time. Apart from this, there is no cogent evidence led that, claimant, due to the accident, sustained injury, he become permanently disable, however injury certificate collected by the police issued by CW-2, dated 31-08-2009, show that, under road traffic accident, claimant sustained grievous and simple injuries, as described, thereby having considered the evidence led, I have no hesitation to answer issue No.2, as partly in the affirmative findings.

33. In his cross-examination by the Advocate for respondent No.2, he admitted that, he is unable to say that, rod and screw inserted by the claimant under operation to the right leg, whether removed in another dispensary or not, while giving estimate bill, dated 05-02-2011, worth Rs.80,000/-, produced at Exh.44.

6. It is abundantly clear that the claimant miserably failed to prove the quantum of the permanent disability he allegedly sustained, as also failed

to demonstrate how it has affected the loss of earning capacity. The learned Tribunal as taken into consideration the expenses made by the claimant towards his treatment and adding non-pecuniary damages, the final award of Rs.1,75,000/- has been granted by the learned Tribunal. Had it been the case that the claimant has had meticulously proved the permanent disability and loss of earning capacity *qua* such permanent disability, the claimant would certainly have been entitled to receive adequate compensation accordingly for failure of the claimant to prove his case for seeking compensation under the heading of loss of earning capacity, I do not find that the learned Tribunal has committed any error while granting the compensation at Rs.1,75,000/-.

7. As such, the judgment and award passed by the learned Tribunal does not call for any interference so as to enhance the compensation granted to the claimant.

8. Hence the following order :-

ORDER

A. The Cross Appeal stands dismissed.

B. No order as to costs.

[AJIT B. KADETHANKAR, J.]

PRW