IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1164 OF 2010

National Insurance Co.Ltd.
Through it's Divisional Manager,
Aurangabad Divisional Office,
Hazari Chember, Station Road,
Aurangabad **...Appellant**

Versus

1. Bhausaheb Sahebrao Pawar
Age: 34 years, Occ: Agri.
& Building worker,
R/o Nilwande, Tal. Sangamner,
Dist. Ahmednagar

2. Jagan Karbhari Murtadak
Age: Major, Occ: Business,
R/o at: Karule, Post: Nilwande,
Tq. Sangamner, Dist. Ahmednagar

3. Naim Abdul Gani Shaikh
Age: Major, Occ: Business,
R/o Mogalpura, Tq. Sangamner
Dist. Ahmednagar **...Respondents**

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Mr. A. B. Gatne, Advocate for the Appellant
Mr. K. N. Shermale, Advocate for Respondent No. 1

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CORAM : R.M. JOSHI, J.

DATE : OCTOBER 08, 2025

JUDGMENT:

1. This Appeal is filed by the Insurer under Section 173 of Motor Vehicle Act, 1988 (for short "**the Act**") takes exception to the judgment and award dated 12.02.2010 passed in M.A.C.P. No. 76/2005.

2. Parties are referred to as ‘claimant’, ‘owner and driver of vehicle’ and ‘insurer’, for the sake of convenience.

3. It is the case of the claimant that on 03.04.2004 at around 10.00 pm he was proceeding on Sangamner-Kopargaon road as a pillion rider on the motorcycle. When they reached to the spot of accident, jeep bearing no. MH-15-K-1256 came from the opposite side in excessive speed and dashed to the motorcycle. As a result of which, he sustained serious injuries. It is claimed by the claimant that the accident has occurred due to the negligence on the part of the jeep. Due to said accident, claimant has suffered 25% permanent disability. On different heads, compensation of Rs. 3,00,000/- is sought.

4. Insurer filed written statement at Exh. 17 denying claim of the claimant including the manner in which the accident occurred, nature of injuries, hospitalization, disability and compensation. It is claimed by the Insurer that the transfer of policy was not intimated by the Opponent No. 1, as such, insurer

is not liable to pay compensation to the claimant. It is also claimed that there are several breaches of the conditions of policy including the driver having no valid and effective license, etc.

5. The owner and driver of the jeep filed written statement at Exh. 19 admitting the accident but denied the allegations/contentions of the claimant. It is claimed that accident occurred due to the fault of the rider of the motorcycle. Original Opponent no. 2 failed to appear in the proceedings and as such, claim Petition decided ex-parte against him.

6. Issues came to be framed on 20.06.2006 vide Exh. 20. Initial burden was on the claimant to prove that the accident has occurred due to the negligent driving of the jeep and entitlement of the compensation. Burden was cast upon the insurer to prove the alleged breaches of the conditions of insurance policy.

7. Claimant examined himself at Exh. 24 and placed reliance on the police papers (Exhs. 25 to 32) in order to prove factum of occurrence of accident and

injuries caused to him. Except for this evidence, no other evidence is brought on record by the parties. The Tribunal partly allowed the claim directing payment of compensation of Rs. 2,47,000/- inclusive of NFL amount. Opponent Nos. 1 and 3 are held jointly and severally liable to pay compensation amount. Being aggrieved by the said awarded, insurer has filed this Appeal.

8. Learned Counsel for the Insurer submits that the Tribunal has committed error in passing award impugned by ignoring composite negligence of both parties in the occurrence of the accident. It is his submission that since the driver and owner of motorcycle was not made party to the proceedings of claim petition, the same suffers from non-joinder of parties. On the point of proof of disability, it is his contention that neither treating doctor was examined nor the medical officer who has issued permanent disability certificate is not examined, it cannot be held that the permanent disability has been proved by the claimant. On the point of medical bills, it is sought to be argued that the compensation granted is excessive. It is also pointed out that the Appeal came

to be filed on the ground of non transport driving license.

9. Learned Counsel for the Claimant supported the impugned order. It is his contention that by consent of both sides, disability came to be accepted to the extent of 25% and hence, now it is not open for the insurer to challenge the same. It is his submission that since the claimant was not rider of the motorcycle but was a pillion rider, no negligence can be attributed against him. It is his submission that it is a right of the claimant to file claim against any one or all joint tortfeasor.

10. There is no dispute with regard to the fact that on 03.04.2004 accident occurred in which claimant sustained injuries. Further, there is evidence to indicate that he was pillion rider on motorcycle and hence, cannot be held responsible for the occurrence of the accident in any manner whatsoever. Police papers indicate the involvement of the offending jeep in the occurrence of accident. The evidence of the claimant who is a pillion rider is first hand evidence in respect of occurrence of accident and to counter the

same, no evidence is led by the owner and insurer of offending vehicle. Similarly, evidence is led with regard to hospitalization and medical treatment for the injuries suffered by him. Record indicates that consent was recorded by both sides to accept the disability to the extent of 25%. In view of this, it needs to be held that the accident in question has occurred due to negligence of driver of the jeep and the claimant sustained injuries resulting into permanent disability to the extent of 25%. Similarly, it needs to be accepted that he was hospitalized and was required to incur medical expenses. In so far as medical expenses are concerned, the compensation decided by the Tribunal is in consonance with the evidence placed on record.

11. It is choice of the claimant to file the claim against all joint tortfeasor or any one of them in view of judgment of Hon'ble Supreme Court in case of ***Khenyei vs. New India Assurance Co. Ltd and Ors, (2015) 9 SCC 273***. Hence, there is no substance in the contention that the Petition suffers from non-joinder of necessary parties. As far as objection raised with regard to non-transport license is concerned, the law as on today

stands being settled by the Hon'ble Supreme Court in case of ***Mukund Dewangan Vs Oriental Insurance Company Ltd., 2017 (14) SCC 663***, makes this objection unsustainable. In so far as breach of policy, there is no evidence led by the Insurer to substantiate the same. Hence, it cannot be said that the liability of insurer to pay compensation is absolved.

12. In view of above discussion, there is no merit in the Appeal. In the result, Appeal stands dismissed.

13. Amount deposited before this Court by Insurer is allowed to be withdrawn by Claimant with accrued interest.

(R. M. JOSHI, J.)

Malani