2025:BHC-AUG:19878

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 241 OF 2017

New India Assurance Company Ltd.
Branch Near Ashoka Hotel,
Abbott Building, Ahmednagar.

Through Authorized Signatory,
Legal Hub In-charge, Adalat Road,
Aurangabad. .... Appellant
(Orig. Respondent no.2.)

Versus

1. Srimati Mainabai Nivrutti Sable,
Age : 59 years, Occu. : Nil,
R/o. Koregaon (Chikhali),
Tq. Shrigonda, Dist. Ahmednagar.

2. Narayan S/o. Ramchandra Bandal,
Age : Major, Occu. : Business,
R/o. Kuruli, Tq. Khed, Dist. Pune. .... Respondents

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Mr. Sudhir V. Kulkarni, Advocate for Appellant.
Mr. Rahul B. Temak, Advocate for Respondent No.1.

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 24 JULY 2025
PRONOUNCED ON : 29 JULY 2025

JUDGMENT :

1. Insurance Company - original respondent no.2 is hereby challenging judgment and award passed by learned Motor Accident Claims Tribunal, Ahmednagar dated 23.03.2015 granting compensation on account of injury suffered by Smt. Mainabai Sable and who had sought compensation by filing M.A.C.P. No.784 of 2011.

2. In the claim petition, in brief case of respondent – original claimant was that claimant and her relatives were waiting on bus stand at Nimgaon Khalu and were particularly taking shelter of shadow of stationary truck bearing MH-12-CH-9715. Around 4:00 p.m., abruptly the said truck was moved in rash and negligent manner running over the right leg and right hand of claimant and thereby she allegedly suffered disability and lost her source of future earnings. By rendering labour work, she used to earn Rs.4500/- per month, which she has permanently lost and thereby sought claim to the tune of Rs.3,00,000/-.

3. In response to the claim petition, opponent nos.1 and 2 caused appearance, but opponent no.1 failed to file written statement. Contesting opponent no.2 Insurance Company vide written statement (Exh.17) denied fault and negligence of the truck driver, the injuries or permanent disabilities suffered by claimant and thereby denied its liability.

After appreciating the respective stands and evidence adduced in the court, learned tribunal was pleased to grant compensation of Rs.4,95,397/-, which was directly to be jointly and severally paid by opponent nos.1 and 2 with interest at the rate of 9% per annum.

Above judgment and award dated 23.03.2015 is taken exception to by Insurance Company by filing instant appeal on various grounds spelt out in the appeal memo.

4. The specific stand taken by appellant Insurance Company is that, *firstly*, there was no rashness or negligence on the part of the driver of the truck which was admittedly insured by them. Second defence was driver had no valid driving licence, which amounted to breach of condition of policy. *Thirdly*, there to be no cogent and reliable evidence about injury or disability. For above reasons, learned counsel for Insurance Company urged to overturn the above judgment and allow the appeal.

5. On the contrary, learned counsel for claimant justified and supported the findings and conclusion pointing out that, there was utter negligence on the part of the driver of offending truck. That, the driver had valid driving licence and photocopy of the same placed on record. That, Insurance Company before the tribunal raised no objection to the same, and therefore, learned tribunal committed no error in considering and relying the same. Learned counsel pointed out that, the Insurance Company has not granted just compensation as is required to be done by law, and thereby, he sought enhancement.

6. After considering each of the side and on going through the impugned judgment, it transpires that, claim was set up on the above premise that, on 12.05.2011, while claimant was taking shelter at the rear side of the truck which was stationary, the truck was moved over the leg of injured causing her injury. FIR is lodged on the same day. MLC is also placed on record to substantiate accidental injury. Case seems to have been set up that because of injury and disability arising out of it, claimant who was rendering labour work has been incapacitated from doing the same work and earning for her livelihood.

7. From the written statement of Insurance Company, grounds raised herein are also taken up before the tribunal i.e. failure to prove negligence; non availability of valid driving licence with the truck driver and thirdly no loss of earning as claimed.

8. Attention of this court is invited by learned counsel for appellant to the impugned judgment. It appears that, to substantiate the claim, FIR, spot panchanama, statement of claimant and medical papers like Exhs.30 and 31 (Discharge card, Disability Certificate and Medical Bills) are placed record. It is evident from the judgment and the evidence adduced on behalf of Insurance Company that there

is no serious challenge to the above discussed documents. On the strength of such documents, there is no hesitation to hold that rashness and negligence as well as suffering injuries out of motor vehicle has been substantiated.

9. The sole ground raised in appeal, and which is much emphasized, is the non-availability of driving licence of the driver and thereby there is breach of condition of policy, due to which Insurance Company is sought to be absolved.

10. Ownership of offending truck by opponent no.1 has not been disputed. As stated above, challenge to the claim is on the ground that driver was not holding valid driving licence at the time of accident. Insurance Company is trying to get itself absolved for breach of such condition. It is emerging from the papers that, driving licence (Exh.56) to which 'no objection' has been tendered by the claimant, date of renewal of licence is given as 28.01.2008 and it seems to be directly renewed on 16.05.2011. Undisputedly, accident in question is dated 12.05.2011. Therefore, before renewal itself and when licence was yet to be renewed, accident had taken place.

Now, it is expected of Insurance Company to further demonstrate that the owner of the truck was aware that the driver driving his truck, did not have a valid licence. Only when this is demonstrated that insurance company would probably succeed and it would be just for the Insurance Company to be absolved of the responsibility. Here, as stated above, Insurance Company firstly has not examined R.T.O. authority. Nothing has been shown to demonstrate that owner was aware about currency of the licence during above period or on the date of which accident allegedly took place. Unless such burden is discharged, Insurance Company cannot evade the liability. Precisely, fundamental breach of policy of insurance has not been substantiated. For above reasons, mere raising ground about breach of policy is itself not sufficient as above required burden has not been completely discharged by the insurance company.

Law to this extent is enunciated in the landmark cases of ***National Insurance Co. Ltd. v. Swaran Singh and Ors***. reported in ***2004(3) SCC 297*** and ***IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi and Others*** reported in ***2023 SCC OnLine SC 1398***, which is rendered by the Hon'ble Apex Court recently that mere taking stand of non-availability of driving licence or breach of policy, without discharging the burden is of no avail to the Insurance Company. Here, it is noticed that, learned tribunal by the impugned judgment even directed Insurance Company to be entitled to pay the compensation and recover the same from opponent no.1 without filing suit. Thus, interest of Insurance Company is otherwise also protected.

11. As regards to enhancement of claim sought by claimant is concerned, this court has appreciated the contents of judgment in paragraph 19, wherein calculations of entitlement of compensation are dealt and discussed. For want of proof of earnings, learned tribunal has rightly considered notional income, i.e. in the backdrop of nature of work allegedly rendered by claimant. Therefore, this court does not find any infirmity in considering notional income as the base for further computation. Paragraph 20 shows that medical bills are considered and amount towards it is awarded. Even distinct amounts are granted under the head of pain and sufferings, loss of income during affected period, conveyance and special diet. Therefore, virtually each and every aspect for which claimant was entitled, has been considered and granted by the tribunal.

12. In view of the nature of the claim and quality of evidence, the view taken by tribunal for granting compensation seems to be just and proper in the given facts and circumstances of the case.

13. Consequently no case being made out to interfere in the judgment and award of the tribunal and there is no merits in the case.

14. The appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

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