2025:BHC-AUG:27697

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2638 OF 2015

The New India Assurance Co. Ltd.,
Through its Branch Manager,
Branch at Shivaji Chowk, Naik Niwas,
Osmanabad
Through its authorised signatory,
Administrative Officer, Legal Cell
Aurangabad ..Appellant

Vs.

1. Raghunath Vishwanath Survase,
Age 36 years, Occ. Agri.,/Milk Business,
r/o. Borkheda, Tq. Dist. Osmanabad

2. Shashikant Maruti Pawar,
Age : 43 years, Occ. Agri.
r/o. Wadgaon (S),
Tq. and Dist. Osmanabad ..Respondents

Mr.Dhananjay P. Deshpande, Advocate for appellant
Mr.Ashok B. Tele, Advocate for respondent no.1

WITH

CIVIL APPLICATION NO. 2593 OF 2016
IN FA/2638/2015

WITH

CIVIL APPLICATION NO. 13018 OF 2015
IN FA/2638/2015

CORAM : AJIT B. KADETHANKAR, J.
DATE : SEPTEMBER 30, 2025

ORAL JUDGMENT :-

Feeling aggrieved by the judgment and award dated 22.06.2015, passed by learned Chairman, Motor Accidents Claims Tribunal, Osmanabad, in Motor Accident Claim Petition No.145 of 2011, original respondent no.2 – Insurance Company has filed present First Appeal under Section 173 of the Motor Vehicles Act (“M.V. Act”, for short).

2. The appeal was admitted vide order dated 08.03.2016. Record and Proceedings has been received. For the sake of convenience, the parties are referred to corresponding to their factual status in the claim petition.

Brief facts of the case:-

3. The First Information Report (FIR) was lodged by the present respondent no.1/claimant at Osmanabad City Police Station, Osmanabad. It was complained by the respondent no.1/claimant that on 12.02.2011, while he was riding as pillion rider on a motor bike, bearing registration No.MH-25-A-9950, driven by one Amol Jadhav, a car bearing registration No.M-25-R-0679, dashed the bike, resulting into grievous injurious to the claimant. Subsequently, the

claim petition came to be filed by the claimant against respondent no.2 (car owner). The claim was filed under Section 166 of the M.V.Act, seeking compensation of Rs.5 Lakhs, to be recoverable jointly and severally from the Insurance Company and the owner of car. The record reveals that although the car owner was served with notice, he stayed away from the present proceedings. The appellant – insurer, however, defended the case by filing written statement, on facts as well as on law. It was the specific case of the appellant – insurance company that the insured vehicle was falsely implanted in the accident and that the claim was in collusion with the car owner.

4. Upon hearing both the parties and going through the evidence, learned Tribunal, vide judgment and order dated 22.06.2015, partially allowed the claim petition and held the appellant – insurance company as also the car owner jointly and severally liable to pay the compensation for Rs. 4,34,400/-, including the the amount payable under Section 140 of the M.V. Act. Interest at the rate of 8% per annum was also imposed, to be payable from the date of the claim petition, till its realisastion. It is against this judgment and award, present appeal has been filed by the insurance company.

Argument of the appellant/Insurance company:-

5. Mr.Deshpande, learned counsel representing the appellant, strongly submitted that the defence of the appellant – Insurance Company raised in the written statement has not been considered by learned Tribunal. He would submit that the involvement of the insured vehicle in the accident is not only doubtful but it is apparent from the evidence on record itself, that it was falsely implanted in the accident. Mr.Deshpande, learned counsel, would also submit that there is inordinate delay in filing the FIR in respect of the accident and there is no explanation to the delay caused in filing the complaint. Mr.Deshpande, learned counsel, would also submit that the insurance company has produced on record the certified copy of the M.L.C., pertaining to the accident, certified copy of the depositions of the claimant in claim in S.C.C. No.1394 of 2011, which falsifies the case of the claimant. Mr.Deshpande, learned counsel, would submit that learned Tribunal has even not exhibited those documents filed by the appellant. To conclude, learned counsel would submit that learned Tribunal ought to have objectively seen the contents of the written statement and the defence raised by the appellant – insurance company, corresponding to the documents on record and ought to have

considered those documents, which are in the form of certified copies. Mr.Deshpande would lastly submit that the appeal may be allowed and the judgment and award may be quashed and set aside, holding that the insured vehicle was not involved in the accident. Alternatively, he would submit that the matter be remanded back to learned Tribunal to decide afresh the issue of involvement of the insured vehicle in the accident as also the issue of negligence.

Arguments of the respondent:-

6. Mr.Tele, learned counsel for respondent on.1 – claimant, would support the findings recorded by learned Tribunal on every aspect of the matter. He would submit that the evidence on record was sufficient to hold that the accident was occurred due to the dash given by the insured vehicle. The entitlement of the claimant as also liability of the respondent have been assessed and adjudicated by learned Tribunal after assessing the evidence on record and applying judicious mind. With this, Mr.Tele, learned counsel for respondent no.1-claimant, tries to convince the court that no interference under Section 173 of M.V. Act is warranted to disbelieve the finding recorded by learned Tribunal.

7. Upon hearing learned counsel for both the parties and with their able assistance, I have gone through the record in the case.

8. Considering the arguments advanced by the parties before me, I frame the following points for consideration of the appeal:-

Whether learned Tribunal has properly assessed the evidence on record, and particularly, the evidence produced by the appellant – Insurance company?	No
What Order	As per final order

Discussion:

9. It is not disputed that the accident (of whatsoever nature) occurred on 12.02.2011 and the FIR was lodged by the claimant on 07.03.2011. A plain reading of the FIR shows that the complainant (claimant) has even not given a single explanation as regards the delay caused in filing the FIR. On the contrary, the complainant has stated in the FIR that a day prior to lodging of the FIR, his leg was operated and on the next day, he filed the FIR. It is a matter of fact that the appellant – Insurance Company had produced on record the certified copy of the M.L.C. dated 12.02.2011, which

was recorded in respect of the accident and the injury suffered by the claimant. The document was marked as “D-57” and “D-58”. Mr.Deshpande would submit that the MLC records the immediate reaction from the side of the claimant after the accident, which demonstrates that the accident occurred due to slip from the motor bike. He would submit that had it been a case of accident, definitely, in the MLC, which was recorded by the wife of the claimant – Vaishali, she would have reported about the accident.

10. Mr.Deshpande would further submit that the depositions of the claimant in S.C.C. No.1394 of 2011, that was brought in the court of learned Chief Judicial Magistrate, Osmanabad, also indicates that it was not a case, as has been set up by the claimants in the present claim petition, showing involvement of the insured vehicle in the accident. Since certain documents were placed on record by the appellant – insurance company regarding the vital issue in the claim petition, learned Tribunal ought to have taken cognizance and ought to have dealt with those documents to decide the issue of involvement of insured vehicle in the accident.

11. Mr.Tele, learned counsel for respondent no.1 – claimant, submits that on recording the evidence of the claimant in the

criminal trial, ultimately, the trial ended in acquittal on the point of negligence and as such, even if the court looks into the deposition, no other result could be achieved by the appellant – insurance company. May it be. What I find that particularly, when the issue is of involvement of the insured vehicle in the accident, when there is inordinate delay in filing the FIR in respect of the accident and particularly when the statement of the claimant himself in the FIR has vital exception to the case reported in the MLC, learned Tribunal ought to have looked into the defence raised by the appellant – insurance company objectively, corresponding to the contents of the documents already on record as also the documents produced by the insurance company on record.

12. It is true that the documents, which the appellant – insurance company sought to be relied by learned Tribunal, were filed, yet, those were not exhibited. Under these circumstances, Mr.Deshpande, learned counsel for the appellant – insurance company, submits that the matter may be remanded back to learned Tribunal to decide afresh the issue of involvement of the insured vehicle in the accident. Mr.Tele, learned counsel for the claimant, although insisted that the judgment and award be maintained, yet, fairly submits that the claimant has no hesitation to meet the

objections raised by the insurance company on its own merits. He would submit that if the insurance company does not place any new document on record and if opportunity of hearing and to counter the documents and defence of insurance company, is given to the claimant, the claimant is ready to participate in the trial on the point of involvement of the insured vehicle in the accident. Mr.Tele would further submit that the appellant has deposited the entire amount awarded by learned Tribunal in this court together with interest. He would submit that since the issue of involvement of the insured vehicle is raised by the insurance company, the claimant has not been paid any amount out of the deposited amount. In view of this and on the submission made by learned counsel for the parties, I deem it appropriate to allow the appeal partly.

13. In the result, the following order:--

(i) The appeal is partly allowed. The impugned judgment and award dated 22.06.2015, passed by learned Chairman, Motor Accidents Claims Tribunal, Osmanabad, in Motor Accident Claim Petition No.145 of 2011, is quashed and set aside.

(ii) The matter is remanded back to learned Tribunal to decide the issue of involvement of insured vehicle in the questioned accident.

(iii) Learned Tribunal shall render its findings on the basis of the documents produced on record by both the parties and if necessary, by exhibiting them and reading in evidence where ever necessary.

(iv) Learned Tribunal is requested to conclude the trial within a period of six months from the date of receipt of the Record and Proceedings and file.

(v) Both learned counsel assured that they would not seek a single adjournment in the matter.

(vi) The amount deposited by the appellant – insurance company in this court in the First Appeal, be remitted to learned Tribunal together with interest accrued thereon. Disbursement of that amount shall be subject to the final decision to be rendered by learned Tribunal after hearing the matter, as directed in this order.

(vii) Needless to mention, the observations made or findings recorded in this order shall not affect anyway the proceedings before the Tribunal and learned Tribunal shall deal with the matter on its own merits. Learned Tribunal is expected only to record its findings to the extent of involvement of the insured vehicle in the accident.

(viii) Pending Civil Applications stand disposed of.

(ix) Record and Proceedings be remitted to the learned Tribunal immediately.

[AJIT B. KADETHANKAR, J.]

KBP