IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 58 OF 2010

SHANTANU SHANKARSA DHUDUM
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Date: 2025.07.30 10:24:03 +0530

Kumar Shambhuraj Sarjerao Jadhav]
Age: 5 years, Occ: Nil, Minor through his]
Natural Guardian father Shri. Sarjerao]
Shankar Jadhav,]
Age: 31 years, Occ: Labour, residing at]
Ganganagar, hupari, Tal: Hatkanagale,]
Dist: Kolhapur.]
.... **Appellant Original Claimant**

Versus

1. Sagar Devappa Shelar]
Age: Major, Occ: Vehicle]
Owner, residing at Shivaji Chowk,]
Hupari, Tal. Hatkarangale, Dist: Kolhapur]

2. United India Insurance Co. Ltd.]
A/p. Plot No.23, TPS No.IE Ward]
Bagal Chowk, Kolhapur, Dist: Kolhapur]

.... **Respondents Original Opponent Nos.1 & 2.**

Mr. Sudhakar G. Thorat, Advocate for the Appellant.
Mr. H. G. Misar, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 11th JULY, 2025.

<u>**JUDGMENT. :**</u>

1. This appeal is preferred for enhancement of compensation.

2. It is contention of learned counsel for the Appellant that due to accidental injuries, the Claimant's son has suffered 40% permanent physical disability. At the time of accident, son of the Claimant was 2 years old, but tribunal has awarded compensation of Rs.2,66,500/- out of which Rs.1,40,000/- are medical expenses and given lump sum amount. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondent – Insurance Company that at the time of accident, the son of claimant was 2 years old. The Tribunal has considered all the aspects and on that basis, the tribunal has passed well reasoned order, no interference is required in it, and requested to dismiss the appeal.

4. I have heard both learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Kolhpaur (for short, "the Tribunal").

5. Admittedly, at the time of accident, son of claimant was 2 years old, and he has suffered 40% disability. The disability is not challenged by the insurance company. As per view of Hon'ble Apex Court in the case of ***Master Mallikarjun Vs. Divisional manager, The***

National Insurance Company Limited & Anr.[1], the Claimant is entitled for compensation of Rs.4,00,000/- excluding medical expenses awarded by the Tribunal. The tribunal has absolved the insurance company on the ground that at the time of accident, the driver of offending vehicle was not holding effective and valid driving licence. Learned counsel for the Insurance Company submits that the order passed by the Tribunal is proper as when there is breach of terms and conditions of insurance policy, the insurance company cannot be held liable to pay compensation. In my view, admittedly, at the time of accident, the driver of offending vehicle was not holding effective and valid driving licence. There was breach of terms and conditions of insurance policy. At the time of accident, the offending vehicle was insured with Respondent No.2 – Insurance Company. It is settled principle of law that when there is breach of terms and conditions of insurance policy, the insurance company is liable to pay compensation to the Claimant and recover it from the owner of the offending vehicle.

9. In view of above, I pass following order :

1 Civil Appeal No. 7139 of 2023 (Arising out of S.L.P. (Civil) No.1676 of 2012) dated 26/08/2013.

ORDER

i. The Appeal is allowed.

ii. The Claimant is entitled for compensation of Rs.4,00,000/- @7.5% interest per annum from the date of filing claim petition till realization of the amount.

iii. The Respondent No.2 – Insurance Company shall deposit the compensation amount awarded by the Tribunal along with accrued interest thereon, within six weeks after receipt of the order and recover it from the owner of the offending vehicle i.e. Respondent No.1.

iv. The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

v. Record and Proceeding be sent back to the Tribunal.

9. In view of the aforesaid terms, the appeal is disposed off.

10. All pending applications, if any, also stand disposed off.

(SHIVKUMAR DIGE, J.)