IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 443 OF 2024

The New India Assurance Co. Ltd.)
Having Office at : Mumbai Legal Hub, 4th Floor,)
14/B, Maker Tower, Tower-E, Near world Trade)
Centre, Cuff Parade, Mumbai – 400 005,)
Through Legal Hub, New India Assurance)
Building, 87, M.G.Road, Fort, Mumbai – 400 001) … Appellant

versus

1 Sachin Shashikant Wagh)
Aged about 19 years,)
R/at : Ward No. 6, Tanaji Nagar, Kasara)
Tal – Sahapur, Dist : Thane – 421 602)

2 Ashok Gajanan Wagh)
Adult, R/at : Vakadpada Gavatha, Mokhada)
Khada,)
Nashik – 422 101) … Respondents

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- Mr. Sandeep Jinsiwale, Advocate for the Appellant.
- Mr. Vasant More, Advocate for the Respondents.

CORAM : R. M. JOSHI, J.

DATE : 4th DECEMBER, 2025.

ORAL JUDGMENT :

1. This appeal filed by the insurer under Section 173 of Motor Vehicles Act takes exception to the Judgment and Award dated 19.11.2022 passed in M.A.C.P. No. 1583 of 2016.

2. The insurer takes exception to the said Judgment and Award essentially on the ground that there is a breach of terms and conditions of the policy as the vehicle in question was a private vehicle and was used for hire and reward. Secondly, the liability for payment of compensation is denied on the ground that the driver of vehicle was not holding an effective and valid driving licence at the relevant time and as such on both counts, there is a breach of terms of the policy and hence insurer is not liable to pay compensation. In so far as the quantum of the compensation, it is sought to be argued that the insured was a student and hence the Tribunal has committed error in accepting his income @Rs.7,000/- per month. It is further argued that in absence of any evidence to grant future medical expenses, the Tribunal erred in granting Rs.1,00,000/- by way of compensation under this head. It is further argued that the Tribunal ought not to have granted any compensation for attendance in view of the admission of the injured that he alone came to the Court for recording of his evidence. With regard to the objection of breach of policy, he drew attention of the Court to the evidence of DW-1 Pallavi Bargal and DW-2 Vijay Dhatrak. It is argued that DW-1 has specifically stated about him investigating into the said accident and having met the driver Kishor who has accepted the fact that he was not having a driving licence and was using the insured vehicle for carrying passengers. It is his submission that the evidence of this witness deserves acceptance for the reason that the witness has obtained the Aadhar card of the driver. He further argued there is no cross examination conducted either by the claimant or the owner of the vehicle creating any doubt with regard to the evidence of the investigator. Finally it is argued that notice was issued to the owner which was not replied to nor has the owner contested the proceeding before the Tribunal. It is his submission that since the claimant is relative of the owner, this is a collusive claim filed by them. To support this, he placed reliance on the Judgment of Hon'ble Supreme Court in the case of ***Pappu and Ors. Vs. Vinod Kumar Lamba and Anr.***[1]**.**

3. Learned counsel for the claimant supported the impugned Judgment and Award. It is his contention that the Tribunal has rightly taken into consideration the evidence on record with regard to the claim of the insurer about breach of terms and conditions of the policy and the discussion to that effect can be found in paragraph Nos. 11 and 12 of the Judgment and Award. It is his submission that the Tribunal has rightly taken into consideration the said evidence and hence the same requires no interference. In so far as the quantum, he drew attention of the Court to the fact that the injured has sustained amputation and the artificial limb would not survive for a longer period and that the replacement of the same would be essential. It is his submission that in such circumstances, in fact the compensation awarded @Rs. 1 lakh is inadequate and the same

1 (2018) 3 SCC 208

deserves enhancement.

4. None appeared for the respondent No.2 i.e. owner of the vehicle. The absence of the respondent No.2 indicates that respondent No.2 has no inclination to oppose the present appeal. Pertinently, even before the Tribunal the owner of the vehicle chose not to remain present before the Court and hence the claim proceeded ex-parte against him. Since the owner has failed to cause appearance in this, the appeal to proceed ex-parte against him.

5. The owner filed written statement specifically raising the issue with regard to the breach of terms and conditions of the policy on the ground that the vehicle was plied for hire and reward so, the driver also was not having a valid and effective driving licence during the relevant period. To substantiate the said contention the claimant examined DW-2 Vijay at Exhibit-39, who investigated in the said accident. As per his testimony, he met the driver who admitted to having no driving licence during the relevant period. He has also obtained Aadhar card of the driver which is sufficient to indicate that the investigation was done as claimed by the witness. Pertinently in the cross examination nothing is elicited in order to disbelieve the evidence of the investigator. This Court finds substance in the contention of the counsel for the appellant that the insurer could not have been called upon to prove negative that the driver was not having a valid driving licence. There is no dispute about the fact that the notice was issued to the owner which was not responded to. Moreover, the owner who is the relative of the claimant has chosen not to appear before the Tribunal. In such circumstances, this Court finds that the judgment in the case of ***Pappu and Ors. (supra)*** has square application to the present case. In the result the order passed by the Tribunal deserves modification. Though it is held that the insurer is liable to pay the compensation to the claimant, it is open for the insurer to recover the same from the owner of the vehicle.

6. In so far as the issue of quantum of payment of compensation is concerned, the Hon'ble Supreme Court in the case of ***Hitesh Nagjibhai Patel Vs. New India Assurance Co. Ltd.***[2] has held that for the purpose of determining compensation even in the case of the student, the minimum wage of skilled workmen could be considered. Here in this case, the Tribunal has accepted the income @Rs.57,000/- per month which is reasonable and not excessive as such this Court has no substance in the challenge to the quantum.

7. It is an undisputed fact that the claimant has sustained injuries in the accident which has resulted into the amputation of the right leg. There is further evidence to show that he required an artificial limb. Needless to say an artificial limb once obtained requires replacement after lapse of

2 2025 INSC 1070

atleast 5 to 10 years. In such circumstances, the grant of compensation of Rs.1 lakh is inadequate compensation. Having regard to the age of the claimant and the number of replacement of artificial limb required by him, the compensation is enhanced upto Rs.5 lakh. It is settled position of law that the enhancement of the compensation can be granted to the claimant even without filing any appeal or cross objection in view of the Judgment of the Hon'ble Supreme Court in the case of ***Pappu and Ors. (supra).*** Hence, following order:

ORDER

(i) In addition to the compensation granted by the Tribunal, the claimant would be entitled to receive a sum of Rs.4,00,000/- along with accrued interest @7% p.a. from the date of filing claim petition till realisation of the amount. Needless to say that it is open for the insurer to recover the said amount from the owner.

(ii) The appellant/claimant shall deposit the deficit Court fees on enhanced amount, if any as per rule.

(iii) R & P be sent back to the Tribunal.

8. The appeal is disposed of. All pending applications, if any, also disposed of.

(R. M. JOSHI, J.)