Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 786 OF 2025
WITH
CROSS OBJECTION (ST) NO. 33931 OF 2024
IN
FIRST APPEAL NO. 786 OF 2025

The New India Insurance Co. Ltd. ...Appellant
Versus
Arvind Shivpujan Giri & Ors ...Respondents

Mr. Milind V. More, for the Appellant.
Ms. Ketki Gokhale i/b A. M. Gokale, for the Respondents.

CORAM: R. M. JOSHI, J.

DATED: 16TH FEBRUARY 2026

PC:-

1. By consent of both the sides, heard finally at the stage of admission.

2. This Appeal as well as Cross Objection takes exception to the Judgment and Award dated 1st January, 2019 passed in Motor Accident Claim Petition No. 891 of 2013, whereby the injury claim was partly allowed directing opponents to pay compensation of Rs.5,84,425/- with interest at the rate of 8% per annum.

3. Learned Counsel for the appellant submits that the appellant has raised specific plea with regard to the fake cover

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note relied upon by the claimant. It is his submission that the insurer led evidence of witness, who has substantiated the said defence before the Tribunal. According to him, the Tribunal has committed error in not considering the evidence on record and rejecting the contention of the insurer with regard to the liability.

4. Learned Counsel for the claimant supported the impugned Judgment and Award on the said point. It is her contention that there is no evidence led by the insurer to show that no premium was received in respect of the offending vehicle from the insurer, which was available with the insurer. It is her further contention that the Tribunal has erred in not granting compensation for future loss of income though the claimant has succeeded to prove that on account of the injuries caused and permanent disabilities sustained by the claimant, he has lost the promotional avenue. In this regard, the evidence of the employer is referred. She also placed reliance on following judgments.

i) **Erudhaya Priya vs. State Express Transport Corporation Ltd. (2020 AIR Supreme Court 4284).**

ii) **Union of India (UoI) vs. Oswald Anthony Athayde & Ors. (Bombay High Court-FA No. 448 of 1992).**

5. The insurer has taken plea with regard to the fake cover note and the burden was, therefore, on the insurer to prove the same. The claimant is third party. The claimant has placed reliance on the cover note, which was made available to him by police. As far as the said defence of the insurer is concerned, though the insurer led evidence of the Officer of the company, however, the evidence of this witness is not enough to prove the said plea. Apart from the admission given in the cross-examination, it is a matter of fact that the best evidence available for the insurer in form of the premium register has not been placed before the Tribunal. Non production of such evidence, though available, leads to the adverse inference against the insurer.

6. As far as Cross Objection is concerned, though the counsel sought to be argued on behalf of the appellant that the appellant has lost promotional avenue, perusal of the application or even evidence of the employer does not indicate so. The employer nowhere claims that on account of the injury and the disability caused to the claimant, he denied the promotion. Though, there is no dispute about the general proposition of the law sought to be canvassed by the Counsel for the claimant on the basis of the judgments cited (supra), herein this case it is pertinent to note that without such case being sought to be made out before the Tribunal by claimant on the basis of evidence, the claimant is seeking acceptance of the same by this Court on the basis of oral submission, which is wholly impermissible. Though strict rules of pleading and evidence are not applicable to the proceeding in hand, it is right of the other side to know the plea sought to be raised by the claimant. In absence of any such plea or evidence to support the said submission, this Court find that the claimant has failed to prove any functional/occupational disability.

7. As a result of the same, the claimant is not entitled for any compensation for future loss of income. In any case, the Tribunal ought to have granted compensation to the claimant on account of sustainment of permanent partial injuries by the claimant.

8. Having regard to the nature of injuries and the disability caused to the claimant, the claimant would be entitled to receive additional compensation of Rs.50,000/-.

9. Hence, the following order.

ORDER

i) The First Appeal shall stands dismissed.

ii) The Cross Objection stands partly allowed.

iii) In addition to the compensation granted by the Tribunal, the claimant would be entitled to receive compensation of Rs.50,000/- at the rate of 8% per annum **payable from the date of petition till the date of realization.**

iv) The insurer to deposit the amount in six weeks.

v) The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

(Corrected in **'bold'** vide order dated 2nd April, 2026.)

vi) The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

vii) R & P be sent back to the Tribunal.

10. In view of dismissal of the Appeal, pending Applications, if any, stand disposed of.

(R. M. JOSHI, J.)