IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1870 OF 2014

The United India Insurance Co. Ltd.,
Divisional Office, Aurangabad,
Through its Divisional Manager,
Aurangabad ...APPELLANT
(Ori. Resp. No. 2)

VERSUS

1) Sandip s/o Suryakant Rachatwar,
Age: 25 years, Occu: Education

2) Pradip s/o Suryakant Rachatwar,
Age: 23 years, Occu: Education

3) Santram s/o Digambarrao Rachatwar,
Age: 75 years, Occu: Tailor

4) Prayagbai w/o Santram Rachatwar,
Age: 73 years, Occu: Household

All R/o Basmatnagar,
Dist. Hingoli

5) Shamsoddin s/o Shahbuddin Quazi,
Age: Major, Occu: Business,
R/o Ardhapur, Tq. Ardhapur,
District Nanded ...RESPONDENTS
(R-1to4Ori.Claimants)
(R-5 Orig. R-1)

Mr A. G. Kanade, Advocate for appellant;
Mr S. P. Katneshwarkar, Advocate for respondent Nos. 1 to 4

CORAM : N.W. SAMBRE, J.

DATE : 14th July, 2015

ORAL ORDER :

Heard Mr Kanade, learned Counsel appearing on behalf of the appellant and Mr Katneshwarkar, learned Counsel on behalf of respondents no.1 to 4/claimants.

2. By the instant appeal, the appellant – insurance company, challenges the judgment and award dated 25th November, 2013, rendered by the Member, Motor Accident Claims Tribunal, Basmath, in Motor Accident Claim Petition No.14 of 2011, whereby it has awarded compensation of Rs.3,55,000/- to respondents no.1 to 4/ claimants, on the ground of breach of policy conditions.

3. Few facts, as are necessary for the decision of this appeal, are stated thus :-

Claim Petition under section 166 of the Motor Vehicles Act was filed seeking compensation of Rs.7,00,000/- on account of death of deceased Suryakant in a vehicular accident.

4. It is claimed that on 2nd November, 2010, at about 6.30 p.m., Suryakant was returning home on motorcycle bearing registration No.MH-26-M-6137 and when he reached near Municipal Complex on Kawatha road, Basmathnagar, another motorcycle bearing registration No.MH-26-Y-1452 came from opposite direction in rash and negligent manner and gave

dash to his motorcycle. C.R. No.181/2010 came to be registered against the Driver of the offending motorcycle at Basmathnagar police station, for an offence punishable under sections 279 and 304-A of the Indian Penal Code. Suryakant succumbed to accidental injuries on 4th November, 2010.

5. The respondents-claimants, so as to substantiate their contentions have placed on record that at the time of death of Suryakant, his age was 50 years and by doing his business of tailoring, he was earning Rs.7,000/- per month. As such, compensation of Rs.7,00,000/- was sought for.

6. The appellant-insurance company resisted the claim and denied rash and negligent driving of the Driver of the offending vehicle, which was insured with it. It is the claim of the insurance company that there was a breach of insurance policy conditions, as the Driver of the offending vehicle was not holding a valid driving licence.

7. The learned Tribunal framed the issues and answered the same in favour of the respondents-claimants by observing that the deceased has lost his life in the accident in question and has proceeded to award compensation of Rs.3,55,000/-.

8. Mr Kanade, learned Counsel appearing on behalf of the appellant – insurance company would urge that the compensation as awarded by the Tribunal, is liable to be set aside as the appellant-insurance company could not be held responsible for the same, in view of breach of the policy conditions as has been established. So as to substantiate his contentions, learned Counsel has relied upon the charge-sheet filed against the Driver of the offending vehicle, who was charge-sheeted for not holding a valid driving licence. He would urge that the efforts on the part of the insurance company to summon the Investigating Officer so as to prove the fact that the Driver of the offending vehicle was not holding a valid driving licence, were required to be taken into account as the appellant has tried to discharge its burden.

9. While countering the above referred submissions, Mr Katneshwarkar, learned Counsel appearing on behalf of the respondents/claimants, would urge that the insurance company was duty bound to prove the breach of the policy conditions. He would further urge that the fact about non-holding of a valid driving licence by the Driver of the offending vehicle was not at all established.

10. Having considered rival contentions of the parties, it is noted that P.W.1 Pradeep, examined at Exh.25 and P.W.2 Sk. Saleem examined at Exh.43, are eye-witnesses to the incident in question. The accident in

question was properly established, so also the death of deceased on account of injuries sustained by him in the accident.

11. The moot question that is required to be considered by the Tribunal, so also by this Court is, as to whether the appellant-insurance company has discharged its burden of proving the fact that the Driver of the offending vehicle was not holding a valid driving licence, at the relevant time. With a view to establish the said fact, admittedly, the appellant-insurance company has raised defence to that effect and to substantiate the said contention, has relied upon the charge-sheet filed against the Driver of the offending vehicle. According to Mr Kanade, though efforts were made to examine the Investigating Officer who carried out the investigation into the offence, so as to substantiate the stand of the insurance-company, the said efforts were fruitless. So far as the above referred submission is concerned, even if it is presumed that the Investigating Officer was examined, the evidence of the Investigating Officer, to the extent that the Driver of the offending vehicle was not holding a valid driving licence or failed to produce the driving licence, being hear-say, could be hardly of any assistance. Apart therefrom, the said fact could have been established by the appellant-insurance company by examining appropriate officials from the Regional Transport Office, which efforts were taken not recourse to. In view thereof, in my opinion, the approach of the Tribunal in saddling the liability on the present

appellant does not suffer from any vice of illegality.

12. In the result, the appeal fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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