

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1570 OF 2012

United India Insurance Company Ltd.,
through its Branch manager,
Branch at Nanded, through its
Authorized Signatory
Divisional Manager, at Aurangabad.

.. APPELLANT
[ORIGINAL RESPONDENT No.2]

versus

- 1] Indubai w/o. Mohanrao Shelke,
Aged 40 years, Occ. Household,
- 2] Jaishri D/o. Mohanrao Shelke,
Age : 23 years, Occ. Household.
- 3] Jyoti D/o. Mohanrao Shelke
Age 18 years, Occ. Household
All R/o. Kailash Nagar, Nanded.
- 4] Amriksingh S/o. Jarnelsingh Bal
Age Major. Occ. Business
(Owner of Truck No. MH-15-G-1815)
R/o. Bhagatsingh Road, Nanded.

RESPONDENTS.

Mr. V.R. Mundada, Advocate for the appellant
Mr. Zia Ul Mustafa, Advocate for respondent Nos. 1 to 3.

CORAM : N.W. SAMBRE,J.
DATE : 31st JULY, 2015.

PER COURT:

- 1] Heard. The present appeal is by the Insurance Company questioning the legality and validity of the award delivered in Workmen

Compensation Claim Petition No. 18 of 2008 decided by the Commissioner of Workmen's Compensation, Nanded on January 18,2011. The Commissioner ordered payment of compensation of Rs. 2,,45,978/- to the claimant respondent Nos. 1 to 3 herein as interest @ 12% p.a. from 1.6.2008 till the date of its realization. As such, the present appeal.

2] The present appellant was the original respondent No.2 before the Workmen's Commissioner for compensation. Shri Mundada, learned counsel for the appellant has sought to raise the question of law in regard to the identity of the vehicle in question.

3] He urged that the vehicle involved in the accident was claimed to be a Truck bearing Registration No. MH-15/G-1815. According to him, from the pleadings in the claim petition, the investigation papers filed by the police and the original evidence which is brought on record, it is reflected that the Vehicle bearing registration No. MH-15/1815 was involved and not the vehicle bearing registration No. MH-15/G-1815.

4] So as to substantiate this contention, he has invited my attention to the reasoning part of the Commissioner's order at Para. 7 wherein according to him, the claimant herself deposed that vehicle bearing registration No. MH-15/1815 is involved in the accident. He would further urge that the documentary evidence i.e. exhibits U-2 to U-5 which are pertaining to the investigation such as, FIR, spot panchanama etc., bears the Vehicle Number as MH-15/1815 and not MH-15/G-1815. He also took me through those documents referred supra and has urged that even though in the petition Vehicle number MH-15/G1815 was shown to have been involved, however, the said vehicle is not involved and as such, the appellants are not liable to pay the damages as claimed.

5] Learned counsel for the respondent would urge that once it is brought on record that Vehicle bearing registration Number MH-15/G-1815 is

involved in the accident, as is specifically averred in the claim petition and in all the documents, which were placed on record, including that of the owner of the vehicles, the only conclusion that can be drawn is the vehicle involved in the present case is MH-15/G-1815. Apart from above, he would urge that once it is admitted that there is an accident and vehicle involved was insured with the appellant, the burden shifts on the appellant to prove that the vehicle in question was bearing MH-15/G-1815 and there existed another vehicle bearing number MH-15/1815.

6] So as to support his contentions, the appellant has relied upon judgment of this Court in the matter of ***“Bajaj Allianz General Insurance Co. Ltd. Vs. Meera w/o. Raju Choudhary and others”*** reported in **2014(6)Mh.L.J. 556**, whereas, the respondent claimant has relied upon the judgment in the matter of ***“Raziabee w/o. Shaikh Sattar and others Vs. Surendra s/o. Shivajirao Sangle and others”*** reported in **2012 MCR 231**.

7] After having heard the submissions, I have perused the entire claim petition, the documents U-2 to U-5, the oral testimony of the witnesses so as to analyze, as to whether anything is brought on record by the appellant that there exists another vehicle/truck having Registration No. MH-15/1815. It is to be noted that the claimants have examined Indubai so as to substantiate their case and has brought on record substantial documentary evidence. In those documents, the incident and involvement of vehicle No. MH-15/G-1815 was very much on record. If it is the case of the appellant/insurance company that the Vehicle No. MH-15/1815 is not insured with it, it should have adduced evidence to that effect so as to establish that there exists another vehicle by the said registration number owned by the present respondent No.4/owner and the deceased Mohan was working as Driver on the said vehicle. The burden shifts on the present appellant to depose so, as the claimants have discharged their burden to prove on record the fact about the accident in question and that of the insurance of the vehicle.

8] Once it is not in dispute that the accident in question has taken place and vehicle No. MH-15/G-1815 was insured with the present appellant, the hyper-technical arguments which are sought to be canvassed by the learned counsel for the appellant, in my opinion, are required to be rejected. As such, the appellants have not discharged their burden to that effect. Leaving that apart, in my opinion, the present case is squarely covered by the judgment of this Court in the case of “Raziabee w/o. Shaikh Sattar and others” (Supra). Para.12 of the said judgment is worth referring, which reads thus :-

“12. The inconsistency pointed out by the learned Counsel for the insurance company in the number of the vehicle as mentioned in the claim application and in the policy is correct. However, the name and address of the registered owner appearing in the policy and the name and address of respondent No.1, who is claimed to be the owner is the same. The difference is only one digit (last digit) i.e. instead of “5” it is mentioned as “6”. Such mistake is common and probably it is not to be considered any material inconsistency or defect in proving the policy.”

9] So far as the judgment referred to by the appellant in the matter of “Bajaj Allianz General Insurance Company Ltd vs. Meera” is concerned, same was delivered in altogether different facts and circumstances. Same is not applicable to the facts of the present case. As such, the appeal fails and stands dismissed.

**[N.W. SAMBRE]
JUDGE.**

grt/-