IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 13242 OF 2015
IN FA/1541/2015

DHONDUBAI HIRAMAN CHAVAN AND OTHERS
VERSUS
UNITED INDIA INSURANCE COMPANY LTD. AND ANOTHER
...

Advocate for Appellants : Mr. Ram S. Shinde.
Advocate for Respondent No.2 : Mr. S.G. Chapalgaonkar.
Advocate for Respondent No.3 : Mr. A. P. Bhandari.

CORAM : A.M. BADAR, J.
DATE : 16th DECEMBER,2015.

PER COURT:

1] This is an application for withdrawal of the amount by the original claimant who has lost her left leg in the accident, while she was travelling in tractor and trailer. The appeal is by the insurer of the tractor. Undisputedly, trailer in which trailer was travelling was not insured.

2] Heard learned counsel appearing for the applicant/respondent. He vehemently argued that the claimant was employed by original respondent Nos. 1 and 2, who were owner of the tractor and owner of the trailer attached thereto, respectively. He further argued that the learned Tribunal has given findings that the accident happened because of rash and negligent driving of the tractor, in which left leg of the claimant was damaged and was required to be amputated. According to learned counsel for the applicants, the tractor was insured and as such, the applicant is entitled for withdrawal of the entire amount of compensation because the compensation so awarded is very meager. The learned Tribunal has considered the applicant to be a non working lady there is evidence to show that applicant was working as labourer.

3] As against this, Mr.Chapalgaonkar, learned counsel for the insurance company submitted that the evidence on record shows that the applicant was travelling in the trolley which was not insured by the appellant. He further argued that in all 32 to 35 persons were travelling in the trolly including the present applicant. By drawing my attention to par.11 of the impugned judgment, Shri Chapalgaonkar learned counsel submitted that defence of the insurance company is not at all considered by the learned Tribunal and even evidence of Sadashiv Asole, Administrative Officer of the appellant Insurance Company was totally ignored.

4] Perused the impugned judgment and award and also perused evidence of claimant Dhondubai, available in companion appeal No. 1491 of 2015. Though in her chief examination, Dhondubai has stated that she was employed as Labourer by respondent Nos. 1 and 4, her cross examination reveals that she was merely doing household work at her house and that she was never employed either by respectively No.1 owner of the tractor or by respondent No.4 owner of the trolley/trailor.

5] She admitted in her cross examination, she is an household lady and at the time of accident she was doing household work. Her cross examination further reveals that at the time of accident, she was proceeding to Mukramabad by trolley and villagers were accompanying her in that trolley. She admitted that it was a day of weekly market at Mukramabad. Her cross-examination further reveals that because of the accident 4 to 5 persons died.

6] Prima facie, such evidence of the claimant shows that she was not working as a labourer either on the tractor or trailer attached thereto. Prima facie, She appears to be a gratuitous passenger travelling in the trolley. The trolley in question was not insured with the appellant. At this juncture, it is apposite to note the definition of “tractor” and “trailer” found in Section 2(44) and 2(46) of the Motor Vehicles Act. They read thus :-

2(44). "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;

2(46). "trailer" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle;

7] Bare perusal of these definitions makes it clear that the tractor by itself is not a motor vehicle constructed to carry any load. Considering the fact that the trolley was not insured and the tractor was meant for faring passengers and that prima facie the evidence on record shows that the claimant was not employee, employed for the purpose of loading and unloading goods in the trailer, it is not possible to release the amount deposited by the appellant insurance company of the tractor, in favour of the claimant. Shri Chapalgaonkar, has rightly relied on the judgment in the matter of ***"United India Insurance Company Limited Vs. Serjerao and Ors., AIR 2008 SC 460***, and particularly, para. 6 thereof, which reads thus :-

> "**6.** So far as the question of maintainability aspect is concerned, the issue is concluded by a judgment of this Court in ***Smt. Yallwwa and Ors. v. National Insurance Co. Ltd. and Anr., AIR 2007 SC 2582*****,** wherein in paragraphs 16 to 19 of the judgment, it was observed as follows:
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>> 16. The question which is required to be considered is what would be the meaning of the term 'award' when such a contention is raised. Although in a given situation having regard to the liability of the owner of the vehicle, a claim Tribunal need not go into the question as to whether the owner of the vehicle in question was at fault or not, but determination of the liability of the insurance company, in our opinion, stands on a different footing. When a statutory liability has been

imposed upon the owner, in our opinion, the same cannot extend the liability of an insurer to indemnify the owner, although in terms of the insurance policy or under the Act, it would not be liable therefore.

17. In a given case, the statutory liability of an insurance company, therefore, either may be nil or a sum lower than the amount specified under Section 140 of the Act. Thus, when a separate application is filed in terms of Section 140 of the Act, in terms of Section 168 thereof, an insurer has to be given a notice in which event, it goes without saying, it would be open to the insurance company to plead and prove that it is not liable at all.

18. Furthermore, it is not in dispute that there can be more than one award particularly when a sum paid may have to be adjusted from the final award. Keeping in view the provisions of Section 168 of the Act, there cannot be any doubt whatsoever that an award for enforcing the right under Section 140 of the Act is also required to be passed under Section 168 only after the parties concerned have filed their pleadings and have been given a reasonable opportunity of being heard. A Claims Tribunal, thus, must be satisfied that the conditions precedent specified in Section 140 of the Act have been substantiated, which is the basis for making an award.

19 Furthermore, evidently, the amount directed to be paid even in terms of Chapter-X of the Act must as of necessity, in the event of noncompliance of directions has to be recovered in terms of Section 174 of the Act. There is no other provision in the Act which takes care of such a situation. We, therefore, are of the opinion that even when objections are raised by the insurance company in regard to its liability, the Tribunal is required to render a decision upon the issue, which would attain finality and, thus, the same would be an award within the meaning of Section 173 of the Act.”

8] In view of the foregoing discussion, the application is rejected.

[A.M. BADAR, J]

grt/-