

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CA/14167/2015 IN FA/2055/2013

UNITED INDIA INSURANCE CO. LTD.
VERSUS
SHARDA ROHIDAS BRAHMANE AND OTHERS

...
Advocate for Appellant : Gatne Atul B.
AGP for Respondents:

CORAM : A.M. BADAR, J.
DATE : 8th DECEMBER, 2015.

PER COURT:

- 1] This is an application for withdrawal of the amount deposited by the Insurance Company in pursuance to the award of the MACT, Aurangabad.
- 2] Heard learned counsel for the applicant/original claimant as well as the learned counsel for the Insurance Company.
- 3] Learned counsel for the applicant/original claimant submits that the accident is of the year 2006 and since then the legal representatives of the deceased are waiting for compensation.
- 4] As against this, Shri Gatne, learned counsel appearing for the Insurance Company submits that the Insurance Company is not liable to indemnify the insured as the driver of the offending vehicle was not holding a valid and effective driving licence. This fact is brought on record by the Insurance Company by examining Mr. Tushar Bavaskar, from the office of the RTO, Aurangabad.

5] Perused the impugned judgment and award. It is seen that because of rash and negligent driving of the driver of tempo bearing registration No. MH-17/A9266, Rohidas Brahmane died on 11.6.2006. The applicants/claimants are his legal representatives including his young children.

6] Undisputedly, the offending vehicle was insured with the non applicant/respondent - United India Insurance Company Ltd. Perusal of the impugned award shows that the Insurance Company had examined an official from the office of the RTO, Aurangabad in order to establish its defence that driver of the offending vehicle was not holding an effective and valid licence for driving the vehicle at the time of the accident. However, perusal of the award prima facie shows that the Tribunal has considered the evidence of Mr. Tushar Bavaskar in proper perspective. Evidence of this witness is based on the computerized record available with the RTO, Aurangabad from the year 1999. It is seen that this witness was not aware about the record prior to 1999. That apart, it is seen that no other evidence was available on record in order to show that the driver of the offending vehicle was not holding a valid and effective driving licence from any other RTO than the RTO, Aurangabad.

7] Considering the fact that, as yet even the respondents are not served in this appeal and as the appeal against the owner of the offending vehicle is dismissed way back on 24.11.2014, the application deserves to be allowed with the following order :-

[a] The amount under the award be released in favour of the applicants/original claimants as per the terms regarding its apportionment and disbursement, as directed by the learned MACT, Aurangabad, on condition that the applicants/original claimants shall furnish and undertaking that in the event of allowing the appeal, they shall deposit the amount under the award, within a period of one month.

[b] Civil application for withdrawal is accordingly allowed and disposed of.

[A.M. BADAR, J]

grt/-