

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APEAL FROM ORDER NO. 58 OF 2015

NARAYAN MUKUNDRAO GHARAT THROUGH HIS G.P.A. KUMAR
NARAYANRAO GHARAT
VERSUS
MANGALA SADASHIV SHETE AND ORS

...
Advocate for Appellant : Mr. G K Naik Thigle
Advocate for Respondent No.3: Mr. M.M. Ambhore
.....

CORAM : V. K. JADHAV, J.
DATED : 5th APRIL, 2016

PER COURT:-

1. Being aggrieved by the judgment and order passed by the learned District Judge-1, Beed dated 14.11.2008 in Misc. Civil Application No. 55 of 2006, the original respondent has preferred this appeal.

2. Brief facts, giving rise to the present appeal, are as follows:-

a) On 20.10.1995, at about 5.00 p.m. deceased Jaishankar was going to Gangakhed to meet his sister on his motor cycle bearing registration No. MH-23-D-2222. On way, his motor cycle was dashed to one truck bearing registration No. MWF 4349, which was loaded with Bamboos and was kept stationery on the road. The deceased while driving the motor

cycle dashed against Bamboo and died on the spot. The mother of deceased Jaishankar had filed M.A.C.P. No. 312 of 1997 for grant of compensation under various heads. The appellant-respondent No.1, who is owner of the truck, has not appeared before the Tribunal though duly served. Respondent No.2 driver of the truck though duly served remained absent before the Tribunal and therefore, the claim petition ordered to be proceeded exparte against him. Respondent No.3 insurer of the truck has resisted the claim by filing written statement. Respondent No.3 insurer has raised various defences. Respondent No.3 insurer has denied insurance of the vehicle involved in the accident. Learned Member of the tribunal by its judgment and award dated 28.7.2003 partly allowed the claim petition against respondent Nos. 1 and 2 jointly and severally and thereby directed them to deposit the amount of Rs.80,000/- alongwith interest @ 9% p.a. from the date of presentation of petition till realization of the amount. The learned Member of the Tribunal has dismissed the claim petition as against respondent No.3-insurer.

b) Being aggrieved by the judgment and award passed by the Tribunal, as aforesaid, original respondent No.1-owner of

the truck filed an application bearing Misc. Civil Application No. 55 of 2006 for setting aside an exparte award passed in M.A.C.P. No. 312 of 1997. The learned District Judge-1, Beed by its impugned judgment and order dated 14.11.2008 rejected the said application. Hence, this appeal.

3. Learned counsel for the appellant submits that the appellant had sent a letter, Exh.29, to M.A.C.T. Beed, informing all details that the truck involved in the accident is insured with respondent-insurer. However, the Tribunal by passing exparte judgment and award against present appellant-respondent No.1, saddled him with the liability to pay compensation. Learned counsel submits that even though the appellant has sent a photo copy of insurance cover note, by post to the Tribunal, the same is not considered by the Tribunal and the Tribunal has exonerated respondent-insurer from the liability to pay compensation to the claimant. Learned counsel submits that the Tribunal has exonerated the respondent-insurer on the ground that photo copy of insurance cover note cannot be read in evidence and claimant failed to prove that the truck involved in the accident was insured with respondent No.3-insurer. Learned counsel submits that respondent No.3 insurer should have produced all documents concerning the said insurance cover note before the Tribunal. Learned counsel submits that the Tribunal has acknowledged the

document sent by the appellant and accordingly the said communication is marked Exh.29. Learned counsel submits that even though there is valid insurance obtained by the appellant/owner, in respect of the vehicle involved in the accident and the insurer is liable to pay the compensation, the Tribunal has exonerated the respondent-insurer. Learned counsel submits that the learned District Judge has observed that the appellant remained silent after sending application to the Tribunal by post and he has not appeared before the Tribunal to substantiate his contentions. Learned counsel submits that in the light of said communication, the Tribunal should have directed the respondent insurer to produce all documents in respect of said insurance cover note before the Tribunal. Learned counsel further submits that respondent No.3 insurer at least should have produced before the tribunal the relevant documents in respect of insurance policy of the vehicle involved in accident. Learned counsel submits that the appellant has made out a case to set aside an exparte order passed against him.

4. Learned counsel for respondent No.3 insurer submits that the appellant was not diligent and he has failed to contest the claim petition on merits before the Tribunal. Learned counsel submits that the appellant has produced before the Tribunal photo copy of cover note and thereafter remained absent before the Tribunal. Learned

counsel submits that the learned District Judge has therefore, rightly rejected the application.

5. In response to the query made by this court, learned counsel appearing for respondent No.3 insurer made a statement that the insurance policy in respect of vehicle involved in the accident is valid and effective and it covers the date of accident.

6. In view of provisions of Section 149 of Motor Vehicles Act 1988, the duty cast upon the insurer to satisfy judgments and awards against persons insured in respect of third party risks. In view of provisions of Section 149 of the Motor Vehicles Act, it was duty of the respondent-insurer to produce all relevant documents in respect of the insurance of the vehicle involved in the accident before the tribunal. Instead of that the respondent insurer has denied the liability to pay the compensation to the claimant.

7. In holding any inquiry under Section 168 of Motor Vehicles Act, the Claim Tribunal is required to follow summary procedure as it thinks fit. The Claims Tribunal therefore, shall have all powers of civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents.

8. In view of provisions of Rule 254 of Maharashtra Motor Vehicles Rules 1989, with application for grant of compensation arising out of the accident, there shall be appended to every such application, the documents, as mentioned in sub Rule (5) of Rule 254, which includes the injury certificate, police documents and certified copy of Form "Comp. AA" etc. The information is required to be submitted by the police station in form 'Comp AA' within one month from the date of accident. In the form 'Comp AA' there is specific column about insurance details of the vehicles involved in the accident. Rule 254 of the Rules of 1989, does not speak about filing of cover note alongwith the application for compensation. In the case in hand, the form 'Comp AA' is filed alongwith claim petition. Further, the appellant- owner, by post, has sent a copy of insurance cover note of the vehicle involved in the accident to the Tribunal. In view of above discussion, in my opinion, the appellant is prevented by sufficient cause to appear before the Tribunal to plead his case personally and especially considering the nature of the proceedings as summary enquiry, the impugned order does not stand and the same is thus liable to be quashed and set aside. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby allowed
- II. The impugned judgment and order dated 14.11.2008 passed by learned District Judge-1, Beed in Misc. Civil Application No. 55 of 2006 is hereby quashed and set aside.
- III. Misc. Civil application No. 55 of 2006 is hereby allowed in terms of prayers made therein.
- IV. The exparte award dated 28.7.2003 passed in M.A.C.P. No. 312 of 1997 is hereby quashed and set aside with the following directions:-
 - i) M.A.C.P. No. 312 of 1997 be restored to its original position. The appellant-original respondent No.1 is permitted to file his written statement before the Tribunal.
 - ii) The parties to the claim petition are permitted to lead oral as well as documentary evidence in support of their pleadings.
- V. The appeal is accordingly disposed of.

(V. K. JADHAV, J.)