IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 41 OF 1994

1. Raufkhan Usmankhan pathan,
Age 22 years, Occ. Driver,
R/o. Girgaon now at Basmathnagar

2. Shabbir Ahmed s/o Sagir Ahmed,
Age 40 years, Occ. Business
and Agri. R/o. Basmath ...Appellants

versus

1. Namdeo s/o Maroti Bhusal,
Age 45 years, Occ. Labourer
R/o. Basmathnagar,

2. Radhabai w/o namdeo Bhusal,
Age 40 years, Occ. Agri.
R/o. Basmathnagar,

3. United India Insurance Company,
through its Branch manager at
Parbhani, Station Road,
Parbhani. ...Respondents.

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Mrs. A.N. Ansari, advocate for the appellants.
Mr. M.G. Biradar, h/f Mr. P.R. Katneshwarkar, advocate for respondent nos. 1 and 2
Mr. V.R. Mundada, advocate for respondent No.3.

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CORAM : V. K. JADHAV, J.
DATED : 27th APRIL, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award passed by the Member, M.A.C.T. Parbhani dated 21.7.1993, the original respondent Nos. 1 and 2-driver and owner of the vehicle, respectively, preferred

this appeal to the extent that the Tribunal has erroneously exonerated respondent No.3 insurer from the liability to pay compensation jointly and severally with them.

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

a) On 31.12.1989 at about 10.30 p.m. deceased Dilip was riding his bicycle to the field of his master which is situated on sugar factory road. On way, the vehicle jeep bearing registration No. MXV 8312 came from sugar factory to Basmat in speed and gave a dash to the bicycle of deceased Dilip. At that time, respondent No.1 was driving the said jeep in rash and negligent manner. In consequence of which, deceased Dilip had sustained multiple injuries. He was immediately shifted to Basmat and thereafter to Civil Hospital at Nanded. However, he succumbed to the injuries in the hospital. The legal representatives of deceased Dilip preferred M.A.C.P. No. 24 of 1990 for grant of compensation under various heads. Respondent No.2 has strongly resisted the claim by filing written statement. It has contended that respondent No.1 was driving the said jeep in moderate speed and deceased Dilip was responsible for the accident. It has further contended that vehicle involved in the accident is insured with respondent No.3

and therefore, respondent No.3 insurer is liable to pay the compensation. Respondent No.3 insurer has also strongly resisted the claim by filing written statement at Exh.21. The claim petition was resisted on the ground that at the time of accident the said vehicle jeep was being used for carrying passengers on hire basis and therefore, there is limitation to use the vehicle and it can be used only for social domestic and pleasure purposes and policy does not cover the use of said vehicle for hire or reward. The respondent No.3 insurer has disowned the liability on that count alone. The learned Member of the M.A.C.T. Parbhani by its impugned order dated 21.7.1993 held respondent Nos. 1 and 2 jointly and severally liable to pay the compensation of Rs.54,400/- to the claimants with interest @ 12% p.a. from the date of application till realization of entire amount and the claim petition against respondent No.3 insurer is dismissed.

b) Being aggrieved by the same, to the extent of exonerating respondent No.3 insurer from the liability to pay compensation, the respondents owner and driver preferred this appeal.

3. Learned counsel for the appellants submits that the appellant

owner of the jeep has examined himself on oath before the tribunal and deposed that the jeep involved in the accident was not given on hire. After accident, crime was registered in the concerned police station and after due investigation, charge sheet was submitted against driver of the jeep. No charges under Motor Vehicles Act are levelled against driver for carrying out passengers on hire basis in the private jeep. The respondent No.3 insurer has not adduced any oral or documentary evidence to substantiate its contentions. Learned counsel submits that in other way also deceased Dilip was riding bicycle at the time of accident and there is no question of breach of policy condition as such. So far as the death of Dilip is concerned, risk against his death is covered under third party policy and there is no breach of condition of policy. Learned counsel submits that there is nothing at all to indicate that plying of jeep on road is in violation of condition of permit and therefore, there is breach of policy condition.

4. Learned counsel for respondent insurer submits that the vehicle was on road by violating the policy conditions and said vehicle was being used on hire basis. Learned counsel submits that there has been breach of condition of policy and therefore, the Tribunal has exonerated respondent No.3 from liability to pay the compensation.

5. I have also heard the learned counsel appearing for the respondent claimants.

6. The respondent insurer has raised objection that in view of breach of policy conditions, the respondent insurer is not liable to pay the compensation. On the other hand, the appellant owner of the vehicle examined himself on oath before the tribunal and stated on oath that he used to carry household articles in the jeep for household and agriculture work. In the cross examination, he has further stated that the accident had taken place when the jeep was returning from his agricultural field towards Basmat. It also appears from the police papers that the charges are not levelled against driver of the jeep for using the private jeep on hire basis for carrying out passengers. Respondent No.3 insurer has not adduced any oral or documentary evidence to substantiate its contentions. Otherwise also, deceased Dilip was riding bicycle and the risk of his death is covered under third party policy issued by the respondent insurer. In absence of any evidence adduced by respondent No.3 insurer, it appears that the Tribunal has committed mistake in exonerating the respondent insurer from liability to pay compensation jointly and severally alongwith the appellants owner and driver.

7. At this stage, learned counsel appearing for respondent No.3 insurer submits that the Tribunal has awarded compensation with interest at the rate of 12% p.a. and the same is excessive. The accident had taken place in the year 1989 and claim petition was decided in the year 1993. Learned counsel submits that if in the year 2016, liability is to be fastened on the respondent insurer, then unnecessarily respondent insurer will have to pay interest at such excessive rate. In view of the above submissions, following order would meet the ends of justice.

ORDER

I. The appeal is hereby partly allowed.

II. The judgment and award dated 21.7.1993 passed by the Member, M.A.C.T. Parbhani in M.A.C.P. No. 24 of 1990 is hereby quashed and set aside to the extent of dismissal of claim petition as against respondent No.3 insurer.

III. The judgment and award dated 21.7.1993 passed by the Member, M.A.C.T. Parbhani in M.A.C.P. No. 24 of 1990 is hereby modified in the following manner:-

"Respondent Nos. 1 to 3 are jointly and severally liable to pay amount of Rs.54,400/- (Rupees Fifty four thousand four hundred only) to the claimants with interest @ 7.5% p.a. from the date of application till realization of entire amount."

IV. Rest of the judgment and award stands confirmed.

V. The award be drawn up in tune with the modified award, as aforesaid.

VI. The appeal is accordingly disposed. No costs.

VII. The amount of Rs.25,000/- deposited at the time of granting stay by the owner of the vehicle to be returned to the owner since the Insurance company is held liable for payment of compensation.

(V. K. JADHAV, J.)

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