

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1484 OF 2016
WITH CA/3195/2016 IN FA/1484/2016

ICICI LOMBARD GENERAL INSURANCE CO. LTD. THR ITS LEGAL
OFFICER SHADAB ALTAF SHAIKH
VERSUS
SUSHILA SAINATH SARODE AND OTHERS

...
Advocate for Appellant Mr. S. S. Patil
Advocate for respondent Nos. 1 to 7: Mr. R.B. Dhakne
Advocate for Respondents : Mr. Narayan B. Narwade
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CORAM : V. K. JADHAV, J.
DATED : 9th JUNE, 2016

PER COURT:-

1. By consent of the parties heard finally.
2. Being aggrieved by the judgment and award dated 16.4.2015 passed by the learned Member, M.A.C.T. Ahmednagar in M.A.C.P. No. 866 of 2011, the original respondent No.2 insurer has preferred this appeal.
3. Brief facts, giving rise to the present appeal are as follows:-
 - a) On 18.9.2011, deceased Sainath Sarode had been to Shevgaon to attend the weekly bazaar and in the evening he started returning to his house at Akhatwade. When he was passing nearby

a temple in the village Wadule (Bk.) at that time one Auto Rickshaw bearing registration No. MH-16-AB-5855 came from opposite directions in very high and excessive speed and gave a dash to deceased Sainath by coming to the wrong side. In consequence of which, deceased Sainath sustained head injury and injuries on other parts of his body. He was immediately shifted to Kamble Hospital and therefrom to one Surya Hospital, Ahmednagar. However, on 24.9.2011 he succumbed to the injuries while under treatment.

b) The claimants, being legal representatives of deceased Sainath, preferred claim petition before M.A.C.T. Ahmednagar for grant of compensation under various heads. It is contended that deceased Sainath was of 29 years of age at the time of accident and he was skilled mason and doing masonry work with one Government contractor on monthly salary of Rs.7500/-. It is also contended that all claimants were depending upon his earnings.

c) Opponent No.1/owner has strongly contested the claim petition by filing written statement Exh.16. He has denied the age, income and occupation of deceased. It is also denied that the accident had taken place on account of rash and negligent driving of driver of said Auto Rickshaw. Opponent No.1/owner has not denied the happening of accident, however, it is contended that the claimants have claimed

exorbitant amount of compensation.

d) Opponent No.2/insurer has also resisted the claim petition by filing written statement at Exh.22. It is contended that false involvement of Auto Rickshaw was shown in the alleged accident. It is also contended that at the material time, driver of Auto Rickshaw was not holding valid and effective driving licence. It is stated that the claimants have claimed exorbitant amount of compensation.

e) After considering the evidence adduced by the parties in respect of their rival contentions, learned Member of the Tribunal, Ahmednagar, by its impugned judgment and award dated 16.4.2015, partly allowed the claim petition and thereby directed the respondents to pay Rs.7,69,400/- jointly and severally to the claimants, with interest from the date of petition till realization of entire amount. The said amount of compensation is inclusive of N.F.L. amount which is already awarded and paid to the claimants.

4. Learned counsel for the appellant submits that the claimants have examined P.W.2-A.S.I. Bhausaheb Bhatane at Exh.33, who has investigated the crime, recorded the statements of witnesses and submitted charge sheet before the court. Learned counsel has pointed out that in cross examination, he has not given details as to

how he investigated the crime in question and succeeded in finding out involvement of said vehicle-Auto Rickshaw in the accident. The accident in question occurred on 18.9.2011 whereas, offence was registered on 10.10.2011. There is considerable delay in lodging the F.I.R. and the reason for said delay is not mentioned. In absence of any documentary evidence, and in view of oral evidence of Investigating Officer, who has failed to give details of investigation carried out by him, the only inference could be drawn is that the said vehicle shown to have been involved in the accident falsely.

5. Learned counsel for the respondent/owner submits that owner of the vehicle has not denied the happening of accident and during the course of investigation, statement of driver, who was driving the Auto Rickshaw at the time of accident was recorded. Even certified copy of police statement of the said driver is also placed on record before the Tribunal. After accident, deceased Sainath was brought in the hospital in the same Auto Rickshaw and after some days, it was learnt that deceased Sainath succumbed to the injuries in the hospital. The appellant-insurer has raised a plea of false involvement only, and the appellant-insurer has not raised plea of collusion between the claimants and original opponent No.1. In absence of positive pleadings of collusion between claimants and respondent-owner, if the owner accepts happening of the accident,

then defence raised by the appellant-insurer about false involvement does not survive. The Investigating Officer has carried out investigation, recorded statements of witnesses and after due investigation, submitted charge sheet before the court. The said witness A.S.I. Bhatane could not give details before the Tribunal in absence of case diary or investigation papers. The claimants have produced before the tribunal certified copy of the charge sheet alongwith list. Learned counsel submits that the appellant-insurer has not examined any witness in support of its contention about false involvement of vehicle in the alleged accident. Learned counsel submits that there is no substance in the appeal and thus it is liable to be dismissed.

6. I have also heard learned counsel for the respondents-claimants. Learned counsel for the respondents-claimants submits that there is no error committed by the learned Member of the Tribunal in passing the impugned judgment and award and therefore, he prays that the appeal be dismissed.

7. On perusal of copy of charge sheet, it appears that witness A.S.I. Bhatane, during the course of investigation, has recorded statements of near about 14 witnesses. The claimants have also produced on record certified copy of some other documents

alongwith a list Exh.42 which includes statement of eye witnesses and the seizure panchnama of Auto Rickshaw involved in the accident. It appears from cross examination of witness No.2 A.S.I. Bhatane that he has shown inability to give all details of investigation in absence of case diary. That does not mean that A.S.I. Bhatane has not carried out investigation and submitted false charge sheet in collusion with the claimants and the respondent-owner. It appears from his cross examination that for the first time, the appellant-insurer has suggested this witness about the collusion among claimants, respondent-owner and the investigating officer in carrying out investigation and falsely showing involvement of said auto rickshaw in the accident.

8. Furthermore, the appellant-insurer has not examined any witness to support its contention. The appellant insurer has raised a plea of false involvement of vehicle in the accident and thus burden shifts on appellant-insurer to prove the same. It appears from the oral as well as documentary evidence placed on record that the appellant-insurer has failed to discharge the same. On the other hand, the documents in the form of police papers coupled with evidence of A.S.I. Bhadane, un-mistakenly point out involvement of the vehicle in question. So far as the delay in lodging complaint is concerned, deceased Sainath was admitted in the hospital for

considerable time and he was shifted from one hospital to another. Finally, he succumbed to the injuries while under treatment in the hospital. In my considered opinion, the delay has been explained reasonably. Since no other point is raised in this appeal except false involvement of the vehicle in the accident, I do not find any substance in the appeal. The appeal is thus liable to be dismissed. Hence, the following order is passed:-

ORDER

- I. The appeal is hereby dismissed and disposed of accordingly. No costs.
- II. The respondents-claimants are hereby permitted to withdraw the amount deposited by the appellant-insurer before this Court.
- III. In view of disposal of first appeal, pending civil application No. 3195 of 2016 is also disposed of.

(V. K. JADHAV, J.)

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