

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2902 OF 2015

with

CA No.5413/2014

1. Dilip S/o Sopanrao Arjune,
Age: 43 years, Occu: Service
R/o Newasekar Nagar,
Mantha Road, Jalna,
Tq. & Dist. Jalna.

..APPELLANT
(Orig. Respondent No.1)

Versus

1. Bajaj Allianz General
Insurance Co. Ltd.,
Through its Branch Manager,
2nd Floor, Rajendra Chamber,
Adalat Road, Aurangabad.
2. Meera W/o Raju Choudhary,
Age: 31 years, Occu.: Household,
3. Vishal S/o Raju Choudhary,
Age : 11 Years, Occu: Minor
4. Ganesh S/o Raju Choudhary,
Age: 08 years, Occu.: Minor,

(Ori. Resp.2)

No.3 and 4 are the Minors under
guardianship of their real mother
Meera W/o Raju Choudhary i.e
Respondent No.2.

5. Uttam S/o Gopinath Choudhary,
Age : 55 Years, Occu: Agriculture,
6. Sulabai W/o Uttam Choudhari,
Age: 50 years, Occu.: Agril.,

Resp.Nos. 2 to 6 are residents
of Village Keli Ghavan,
Tq. Badnapur, Dist. Jalna.

(Ori. Claimants)

...

WITH

FIRST APPEAL STAMP NO.1745 OF 2015

with

CA NO./2015

1. Dilip S/o Sopanrao Arjune,
Age: 43 years, Occu: Service
R/o Newasekar Nagar,
Mantha Road, Jalna,
Tq. & Dist. Jalna.

..APPELLANT
(Orig. Respondent No.1)

Versus

1. Bajaj Allianz General
Insurance Co. Ltd.,
Through its Branch Manager,
2nd Floor, Rajendra Chamber,
Adalat Road, Aurangabad.
2. Smt. Chagabai W/o Sandu Madan,
Age : 35 years, Occu.: Household
3. Pravin S/o Sandu Madan
Age : 15 years, Occu.: Minor,
4. Kartik S/o Sandu Madan,
Age: 15 years, Occu.:Minor

(Ori. Resp.2)

No.3 and 4 are the Minors
under guardianship of their
real mother Chagubai Sandu Madan
i.e. Respondent No.2

5. Nivrutti S/o Anna Madan
Age: 65 years, Occu: Agriculture,
6. Smt.Kaushalyabai W/o Nivrutti Madan
Age: 50 years, Occ: Agri.

(Ori. Claimants)

Mr. Deshmukh Shambhuraje V, Adv.for Appellant;

Mr. SG Chapalgaonkar, Adv. For Resp.No.1;

Mr. GG Suryawanshi, Adv. For Resp.Nos. 2 to 6.

CORAM : P.R.BORA, J.

DATE : 1st April, 2016.

ORAL JUDGMENT:

1) Heard. Admit. By consent, taken up for final disposal.

2) Both the appeals since are arising out of one accident both are being heard simultaneously and are being decided by this common order.

3) One claim petition was filed by the legal heirs of the deceased, who was riding the motor-cycle; whereas the other claim petition was filed by the legal heirs of the deceased/pillion rider. Both the claim petitions were allowed by the Tribunal and the owner and the insurance company both were held jointly and severally liable to pay the amount of compensation to the respective claimants.

4) The learned Counsel for the appellants brought to my notice that against the Judgment and order passed in MACP No.74/2011 and 75/2011, the Insurance company had preferred the appeal being First Appeal No.1921/2013 and the same has been allowed by this Court. The learned Counsel has placed on record the copy of the said judgment. The learned Counsel brought to my notice that in the decision of the aforesaid appeal, this Court has recorded an unambiguous finding that the claimants have failed in proving the involvement of the vehicle in question in occurrence of the alleged accident. The learned Counsel submitted that, however, since the appeal was filed by the Insurance company, the same was allowed to the extent of exonerating the insurance company from its liability.

5) The learned counsel further submitted that though attempt was made by the present appellant of filing civil application in the

appeal filed by the insurance company praying the Court to exonerate the owner also from the liability to pay the compensation, the application came to be rejected with liberty to the appellant to file independent proceedings. The learned Counsel submitted that in the circumstances, the original owner has filed these two appeals challenging the Awards passed by the Tribunal in the respective Claim Petitions.

6) The learned Counsel submitted that in view of the clear finding recorded by this Court in FA No.1921/2013 that the vehicle bearing No. MH-21-V-541 was not involved in the alleged accident, the present appeals deserve to be allowed.

7) The learned Counsel appearing for the claimants submitted that from the record it cannot be certainly said that a clear finding is recorded as regards non-involvement of the

vehicle in question. The learned Counsel submitted that the Court has only indicated the circumstance that involvement of the vehicle in question is not proved.

8) However, I am not impressed with the arguments so advanced by the learned Counsel. I have carefully gone through the judgment delivered by this Court in FA no. 1921/2013. In clear terms, the Court has recorded a finding that the claimants have failed to prove involvement of the vehicle concerned in the occurrence of the alleged accident. When the involvement of the vehicle alleged to be owned by the present appellants has not been proved by the original claimants, no liability can be saddled upon the present appellants of paying any compensation to the original claimants, i.e. Respondent Nos. 2 to 6 herein. The judgment and Awards dated 4th May, 2013, passed in MACP Nos.75/2011 and 74/2011 passed by the learned Member, Motor Accident Claims Tribunal, Jalna,

thus cannot be sustained and deserve to be quashed and set aside. Hence, the following order, -

ORDER

- i) The judgments and Awards dated 4th May, 2013, passed in MACP Nos.75/2011 and 74/2011 by the learned Member, Motor Accident Claims Tribunal, Jalna, stand quashed and set aside;
- ii) The amount, if any, deposited by the present appellants be refunded to them;
- iii) Pending Civil Applications, if any, stand disposed of.

sd/-
(P.R.BORA)
JUDGE

bdv/