

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3299 OF 2015
WITH CA/7779/2015 IN FA/3299/2015

M/S. SHRIRAM GENERAL INSURANCE COMPANY LTD.
VERSUS
NAZIYA MEHMOOD PATHAN AND OTHERS

...
Advocate for Appellant : Mr. S. G. Chapalgaonkar
Advocate for Respondents 1 to 7 : Mr. R.P. Adgaonkar
.....

CORAM : V. K. JADHAV, J.
DATED : 14th MARCH, 2016

PER COURT:-

1. Heard finally at admission stage.
2. Being aggrieved by the order passed below Exh.5 in M.A.C.P. No. 330 of 2012, by the learned Member, M.A.C.T. Latur dated 10.9.2014, the insurer/original respondent No.2 has preferred this appeal.

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

3. On 14.10.2012 at 7.30 p.m., when deceased Mehmood was riding a motor cycle and was going to Sugaon, Tq. Chakur, District Latur, his motor cycle met with an accident. It is alleged that a truck came from opposite directions, gave dash to the motor cycle of deceased and as a result of which, deceased Mehmood had sustained grievous injuries and subsequently, succumbed to it. The pillion rider of

the motor cycle, one Mr. Yasin Shaikh also suffered injuries in the said accident. The legal representative of deceased Mehmood filed claim petition bearing M.A.C.P. No. 330 of 2012 before the M.A.C.T. Latur claiming compensation under the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short "the Act of 1988") and also filed an application Exh.5 under Section 140 of the Act seeking relief under "No Fault Liability". The said application Exh.5 came to be strongly resisted by the present appellant-original respondent No.2. The application is resisted by denying the accident. Learned Member of the M.A.C.T. Latur, by order dated 10.9.2014 passed below Exh.5, allowed the said application and thereby directed respondent No.1-owner and respondent No.2-insurer to pay compensation of Rs.50,000/- jointly and severally under "No Fault Liability" to the claimants. Hence, this appeal.

4. Learned counsel for the appellant submits that though the accident in question had taken place on 14.10.2012, the complaint was lodged in the concerned police station on 5.11.2012. Learned counsel submits that the said complaint was lodged belatedly by the pillion rider and the crime was registered against the unknown driver. Even in the said complaint, the pillion rider Yashin Shaikh has failed to mention registration number of the offending truck for the reason that the accident had taken place in the evening time and due to darkness he was not able to see registration number of the vehicle. Learned counsel further submits that the learned Member of M.A.C.T. has erroneously

allowed the said application only on the ground that charge sheet is filed in the case and thus, there is *prima facie* evidence of accident. Learned counsel for the appellant, in the alternate, submits that it may be observed that the observations of learned Member, M.A.C.T. are *prima facie* in nature and the same, in any manner, would not affect the full-fledged trial of the claim petition on merits.

Learned counsel for the appellant, in order to substantiate his submissions, places reliance on the judgment in the case of ***United India Insurance Company Ltd. vs. Shila Datta and others***, reported in ***AIR 2012 Supreme Court 86***.

5. Learned counsel for respondents-original petitioners submits that the pillion rider-original complainant has lodged the complaint belatedly as he had sustained injuries in the accident and he was under treatment. Learned counsel submits that on the basis of his complaint, though lodged belatedly, crime was registered in the police station and during investigation of the said crime, it was transpired that there are eye witnesses to the said accident. Learned counsel submits that after due investigation, charge sheet came to be submitted against the driver of the truck involved in the accident.

6. It appears that the claimants have filed documents such as F.I.R., spot panchnama, Post mortem report, inquest panchnama and statements of witnesses and final report before the learned Member of

M.A.C.T. In the complaint before the police, though belatedly filed, the complainant has not given registration number of the vehicle involved in the accident so also the name of driver, who was driving the said vehicle. However, the same was transpired when crime was investigated by the police. It further appears from the final report that there are two eye witnesses to the accident. Learned Member of the Tribunal has therefore, rightly taken a view that there appears *prima facie* evidence showing involvement of vehicle in the accident and accordingly allowed application Exh.5. I do not find any fault in the order dated 10.9.2014 passed below Exh.5. Merely because the complaint is filed belatedly, cannot be a ground to reject the entire investigation carried out by the police. It also appears that the complainant in the said complaint has explained the delay in lodging the complaint. He has explained that he was under treatment and also mentally disturbed because deceased Mehmood, who was riding the motor cycle at the time of accident, succumbed to the injuries during the course of treatment.

7. Learned counsel for the appellant has rightly submitted that these observations are *prima facie* in nature and this should not affect the trial in the main claim petition. Thus, the observations made by the learned Member, M.A.C.T. Latur, so also the observations made in this order are *prima facie* in nature and it would not affect the trial of the claim petition in any manner. All points are kept open for deciding the main

application on merits. Hence, the following order:-

O R D E R

- I) First appeal is hereby dismissed.
- II) In the circumstances, there shall be no order as to costs.
- III) In response to the order passed by this Court, the appellant-original respondent No.2 has deposited entire amount before this court. The said amount be transferred to the M.A.C.T. Latur and the claimants are permitted to withdraw the said amount as per the apportionment made by the Tribunal.
- IV) In view of disposal of first appeal, civil application No. 7779 of 2015 stands disposed of.

(V. K. JADHAV, J.)

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