

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2190 OF 2015
WITH
CIVIL APPLICATION NO. 10410 OF 2015

Dnyaneshwar Sopanrao Bembade	..	Appellant
Versus		
Nagesh Bhimrao Jogdand & Ors.	..	Respondents

Mr.H.V.Patil, Advocate for the appellant.
Mr.A.D Wange h/f. Mr. S.S. Panale, Advocate for R-1.
Mr.S.G.Chapalgaonkar, Advocate for R-2.

CORAM : A.V.NIRGUDE, J
DATED : 25.08.2016

P.C. :-

1. This appeal challenges judgment and award dated 06.05.2014 passed by the learned Member of the Motor Accident Claims Tribunal, Latur in M.A.C.P. No.203 of 2012, wherein the appellant was respondent No.2, against whom the award is passed. The facts leading to the litigation in short can be stated as under :-

2. On 29.05.2011 at about 9.50 p.m., there occurred collision between two motor cycles on a public street in Latur town. It is alleged that original respondent No.1, who was then a minor was riding motor cycle No.MH24-W-720 and due to rash and negligent driving he collided on claimant's motor cycle. The claimant sustained injury and was hospitalized etc. At the time of opposing the claim, respondent Nos.1 & 2

took a stand that respondent No.1 was not riding motor cycle and was not involved in the accident. On the other hand, insurance company took up a stand that since the owner of the vehicle allowed a minor to ride the vehicle without licence, it amounted to fundamental breach of insurance policy condition and they should be exonerated.

3. After recording evidence, learned Member came to a conclusion that original respondent No.1 was riding the offending motor cycle and had caused accident due to his negligence. The owner of the vehicle/respondent No.2 was saddled with compensation of Rs.1,30,811/- together with 6% interest etc. The learned Member exonerated respondent No.3 insurance company.

4. The learned Counsel for the appellant/original respondent No.2 asserted that the evidence would probabalize his client's defence that the motor cycle No.MH24-W-720 was most probably not involved in the accident. He brought to my notice copy of F.I.R. in which registration number of the offending vehicle was mentioned as MH24-W-120. He also tried to suggest that at the relevant time, respondent No.1 - rider of the offending motor cycle was attending a class. He then brought to my notice the deposition of class teacher to prove that respondent No.1 was attending his class at the relevant time.

5. I am not inclined to accept this submission. During cross-examination of original claimant, he was suggested that

the accident occurred because he jumped the traffic signal and collided on offending motor cycle No.MH24-W-720. During cross-examination, no suggestion was made that motor cycle No.MH24-W-720 was not involved in the accident. On the other hand, respondent No.1 did not enter witness box to explain as to what was in his special knowledge. Learned Member rightly found that respondent No.1 was involved in the accident. It is obvious that during the investigation, number of offending motor cycle was found No.MH24-W-720 and not MH24-W-120. There was possibility that due to darkness number of vehicle was not properly seen and noted but during investigation the police could find that the offending motor cycle No.MH24-W-720 was in-fact involved in the accident. In view of this, I am inclined to dismiss the appeal.

6. The First Appeal is dismissed. The amount deposited by the appellant in this Court shall be handed over to respondent No.2/original claimant immediately.

7. In view of disposal of First Appeal, connected Civil Application for stay does not survive and stands disposed of.

[A.V.NIRGUDE, J.]