

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 782 OF 2015
WITH
CIVIL APPLICATION NO. 10680 OF 2015

THE UNITED INDIA INSURANCE CO.LTD.
VERSUS
RANDHABAI BHAGWAN WADEKAR AND OTHERS

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Advocate for the appellant: Mr. V.R. Mundada
Advocate for respondent-claimants:Mr. R.V. Gore
Advocate for respondent No.6:Mr. P.K. Lakhotiya
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CORAM : V. K. JADHAV, J.
DATED : 25th JULY, 2017

PER COURT:-

1. Heard finally with consent of the parties at admission stage.
2. Being aggrieved by the judgment and award dated 24.07.2014 passed by the learned Chairman, M.A.C.T. Jalna in M.A.C.P. No. 123 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) According to the claimants, on 5.12.2010 at about 9.30, deceased Bhagwan was travelling in an auto rickshaw, bearing registration No. MH-21-M-2409. He was proceeding to

Ghansawangi. On way, within the limits of village Ghansawangi, near *Matsyodari Sut Girni*, one jeep bearing registration no. MH-21-3510, gave dash to the said auto rickshaw on its back side. In consequences of which, deceased Bhagwan thrown out from the auto rickshaw and sustained head injury. He was immediately shifted to Deepak Hospital, Jalna and therefrom he was shifted to Aurangabad. Deceased Bhagwan succumbed to the injuries while under treatment. The claimants have approached the Tribunal by filing M.A.C.P. No. 123 of 2011 for grant of compensation under various heads. It has been contended that deceased Bhagwan was doing the cooking work and earning Rs.4500/- to Rs.5000/- p.m. The claimants were entirely depending upon his income.

b) Respondent No.1 owner has strongly resisted the claim petition by filing written statement. It has been contended that the accident had taken place on account of rash and negligent driving of driver of auto rickshaw and that false crime came to be registered against the driver of jeep. It has also been contended that since jeep is insured with the appellant insurer, the respondent owner is not liable to pay any compensation.

c) The appellant-insurer has also resisted the claim by filing written statement. It has been contended that deceased Bhagwan

had sustained injury on his head by falling down from auto rickshaw. Deceased Bhagwan has lost his balance and thus fell down from auto rickshaw on road. It has also been contended that on 26.12.2010 entry in the station diary of concerned police station, bearing No. 360/10 came to be recorded. Even the letter has also been given to that effect to the Civil Hospital for conducting postmortem examination on the dead body of deceased Bhagwan. Real brother of deceased Bhagwan viz. Prakash, had informed to the police authorities that his brother deceased Bhagwan lost his balance while travelling in auto rickshaw and fallen down on the road and as such sustained the injuries. It has been contended that there is false involvement of vehicle jeep in the accident and belated complaint came to be lodged with different story, showing false involvement of vehicle jeep in the accident.

d) The claimants have adduced oral and documentary evidence in support of their contentions. The appellant insurer has placed on record certain documents, however, has not adduced any oral evidence. Learned Chairman of the Tribunal, by its impugned judgment and award dated 24.7.2014 allowed the claim petition with costs and thereby directing respondent No.1-owner and the present appellant-insurer to pay compensation of Rs.6,58,442/- with interest @ 7.5% p.a. from the date of claim petition till realization of entire

amount, to the claimants. Hence, this appeal.

4. Learned counsel for the appellant-insurer submits that though the accident had taken place on 5.12.2010, the respondent-claimant No.2 Santosh had lodged the complaint belatedly i.e. on 16.2.2011. Learned counsel submits that the appellant insurer has produced on record two important documents i.e. Exh.65 and 66. On 26.12.2010, vide Exh.65, the Assistant Police Sub Inspector has submitted a report to the police Inspector, police station, Begampura, Aurangabad. On the basis of said report, entry No. 360/10 came to be taken in the station diary and A.D. 0/717/10 came to be recorded at police station Begampura, Aurangabad. In the said report, a specific reference has been given that deceased Bhagwan while travelling in the auto-rickshaw, lost his balance, fell down from running auto-rickshaw and sustained head injury. The said information was given by real brother of deceased Bhagwan viz. Prakash. The same A.S.I. vide Exh.66 requested the Medical Officer, Government Medical College and Hospital, Aurangabad for conducting postmortem examination on the date of body of deceased Bhagwan, wherein again the said story of accidental fall has been repeated. Learned counsel for the appellant submits that both these documents are admitted by the claimants and accordingly exhibited the same by the Tribunal vide Exh. 65 and 66. Learned counsel

submits that even in the postmortem report Exh.37, substance of accompanying report from police officer is mentioned and it has been specifically mentioned that as per the police request, history of fall from running auto-rickshaw while bending onwards. Learned counsel submits that it is clear that the claimants have thereafter, afterthought, filed a false complaint before the police, showing involvement of vehicle jeep in the accident in order to claim compensation from the appellant-insurer. However, the Tribunal has not considered the said important documents and fastened the liability on the appellant to pay the compensation.

5. Learned counsel for the respondents-claimants submits that so far as the document Exh. 65 is concerned, no reference is given to the fact that dash was given by the jeep on backside of auto-rickshaw and thereafter, deceased Bhagwan fell down from running auto-rickshaw. Deceased Bhagwan died on 26.12.2010 while under treatment and after his death, his son claimant-Santosh has lodged complaint against the driver of said jeep. Learned counsel submits that claimants have also examined driver of auto-rickshaw Dnyaneshwar Tukaram Suryawanshi, who has admitted in his oral evidence that the said jeep bearing registration No. MH-21-3510 came from backside of auto-rickshaw in speed and gave dash to the auto-rickshaw while overtaking it. He has further deposed before the

court that in consequence of which, deceased Bhagwan fell down from running auto-rickshaw and sustained head injury. He has further explained that owner and driver of said jeep are from his village and because of their fear, he did not report the incident to the police. However, he had disclosed the said incident to the claimant Santosh. Learned counsel submits that after due investigation, police has submitted charge sheet against driver of said jeep and the involvement of the vehicle jeep in the accident is thus proved by the claimants. Learned counsel submits that looking to the head injury, as described in postmortem Exh.37, sustained by deceased Bhagwan, the said injury is not possible by fall on road from running auto-rickshaw and the same is possible only if dash is given to auto-rickshaw by some other vehicle. The said injury, as described in the postmortem, is also not possible by fall of the deceased on his own. Learned counsel submits that the appellant insurer has not examined any witness to substantiate its defence. The driver of the jeep is also not examined. Learned counsel submits that the Tribunal has therefore, rightly fastened the liability on the appellant-insurer alongwith respondent No.1 owner to pay compensation jointly and severally to the claimants. No interference is required. There is no substance in the appeal.

6. I have also heard learned counsel for the respondent No.6-

owner.

7. On careful perusal of pleadings, evidence and the impugned judgment and award passed by the Tribunal, it appears that the claimants have not approached the Tribunal with clean hands. On careful perusal of report Exh. 65 and the intimation given to the Medical Officer, Government Medical College and Hospital, Aurangabad, vide Exh.66, it appears that real brother of deceased Bhagwan, viz. Prakash, had informed to the authorities as well as the police that deceased Bhagwan lost his balance, fell down from running auto-rickshaw on Ghansawangi road and as such, sustained head injury. It has also been specifically informed that said auto-rickshaw belongs to the family. On the basis of his information, A.D. 0/717/10 came to be registered with Begampura police station, Aurangabad. Subsequently, the papers came to be transferred to the concerned police station and accordingly, entry in the station diary was taken in the concerned police station by recording A.D. No. 3/11 on 10.2.2011.

8. It further appears from the document Exh.65 that A.S.I. has submitted report to the Police Inspector, police station, Begampura vide Exh.65 and thereafter vide Exh.66, given intimation to the Medical Officer, Government Medical College and Hospital,

Aurangabad, requesting therein to conduct postmortem examination on the dead body of deceased Bhagwan. In the said intimation Exh.66, it has been specifically reported to the concerned Medical Officer that deceased Bhagwan lost his balance on his own while travelling in the running auto-rickshaw and fell down from the running auto-rickshaw and sustained head injury and succumbed to the injuries. Further, it appears that thereafter, on 16.2.2011 claimant No.2 Santosh has lodged complaint in the concerned police station and informed to the police that driver of said jeep bearing No. MH-21-3510 had driven the jeep in rash and negligent manner and given dash to the auto-rickshaw on its back side.

9. It has also been mentioned in the said complaint Exh.35 that driver of auto-rickshaw viz. Dnyaneshwar, has disclosed the cause of accident belatedly to claimant Santosh due to fear of driver and owner of jeep, involved in the accident. Though the witness Dnyaneshwar (driver of auto-rickshaw) has deposed in similar lines that due to fear of owner and driver of said jeep, he has not disclosed the said incident to anybody and belatedly disclosed it to the claimant Santosh, it is difficult to believe that for no reason, real brother of deceased Bhagwan viz. Prakash has given incorrect information vide Exh.65 to the police at Begampura police station, Aurangabad on 26.12.2010. There was no reason for the said Prakash, who

happened to be the real brother of deceased Bhagwan, to inform to the police that in his own auto-rickshaw deceased Bhagwan was travelling as passenger and he lost his balance while travelling in the auto-rickshaw and just fallen down on tar road and sustained the head injury. The claimant No.2 Santosh admitted in his cross examination that at the time of accident his uncle Prakash was driving auto rickshaw and after accident, his uncle Prakash took his deceased father to the hospital. Claimant No.2 Santosh further admitted that uncle Prakash informed about the accident to the police. The claimants have admitted the said documents Exh.65 and 66, respectively, and therefore, the Tribunal has exhibited those documents.

10. It is also a part of record that the appellant-insurer has tried its level best to call upon the record in the form of entires taken in the station diary, maintained at police station, Begampura and thereafter certain relevant documents from the concerned police station, within whose local jurisdiction, the alleged accident has taken place and even though the police witnesses served with the summons issued by the court, none appears before the court nor relevant documents were produced. It appears that since the documents Exh.65 and 66 are admitted by the claimants, the Tribunal proceeded with claim petition. However, on perusal of the impugned judgment and award,

it appears that the Tribunal has not at all referred and considered those documents at Exh. 65 and 66, respectively. I find substance in the submissions made on behalf of the appellant insurer that the claimants, in collusion with the driver of said auto-rickshaw, filed the claim petition to get the compensation amount from the appellant-insurer, by showing false involvement of vehicle jeep in the so called accident.

11. In view of above discussion, I do not find that the claimants have approached the Tribunal with clean hands. The claim petition filed by the claimants is thus liable to be dismissed. Hence, I proceed to pass the following order:-

O R D E R

- I. First appeal is hereby allowed with costs.
- II. The judgment and award dated 24.7.2014, passed by the Chairman, M.A.C.T. Jalna in M.A.C.P. No. 123 of 2011 is hereby quashed and set aside. The M.A.C.P. No. 123 of 2011 is hereby dismissed.
- III. The appeal is accordingly disposed of.

IV. If any amount is deposited before this Court by the appellant insurer, the same shall be refunded to the appellant insurer forthwith.

V. Pending civil application is also disposed of.

(V. K. JADHAV, J.)

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