

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 868 OF 2009
WITH
CIVIL APPLICATION NO. 9488 OF 2017

The New India Assurance Company Ltd.,
a Subsidiary of the General Insurance
Corporation of India and a company
Incorporated under the Companies Act
having one of its Divisional office at
Adalat Road, Aurangabad
Through its Senior Divisional Manager
Shri Vishwas S/o Bansi Gayakwad,
Age 52 yrs., Occ. Service at
The New India Assurance Co.
D.O.No.1 Adalat Road, Aurangabad.

...Appellant

Versus

1. Dattu s/o Sahebrao Mote,
Age 20 yrs, Occ. Cleaner
r/o Bodhegaon (Khurd).
Tk. Phulambri District Aurangabad.

2. Sanjay s/o Phulchand Chaudhari,
age major, Occ. Truck owner,
r/o Dadra Nagar Haveli,
Main road, Silvassa District Silvassa,
Dadra Nagar Haveli.

... Respondents

.....
Mr. Ajit B. Kadethankar, Advocate for appellant.
Mr. P. F. Patni, Advocate for Respondent No.1.
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CORAM : V. K. JADHAV, J.
DATED : 17th JULY, 2017

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and award dated
16.10.2008, passed by the learned Chairman, M.A.C.T. Aurangabad

in M.A.C.P. No. 635 of 2006, the original respondent No.2 insurer has preferred this appeal.

2. Brief facts, giving rise to the present appeal are as follows:-

a) On 2.3.2006, the respondent original claimant was travelling in a truck bearing registration No. DN-09/8810 as a cleaner from Nashik to Peth. On way, within the limits of village Sawal-Ghat, the driver of the truck could not control the vehicle on the turn, and as such, the truck fell down in the valley. In consequence of which, the claimant sustained injuries on his right hand and his right hand was completely cut down. He was also admitted in the district Hospital, Nashik where he remained as indoor patient for many days. The respondent claimant has approached the Tribunal by filing M.A.C.P. No. 635 of 2006 for grant of compensation under the various heads. It has been contended in the claim petition that he was serving as cleaner of the said truck on monthly salary of Rs.3000/- He is also entitled for compensation under the heads of medical expenses, special diet, pains and suffering, attendant charges etc.

b) The respondent owner though duly served, remained absent and therefore, hearing of the claim petition ordered to be proceeded exparte against him.

c) The appellant-insurer has strongly resisted the claim petition by filing written statement. It has been specifically denied that the claimant was working as a cleaner at the time of accident. It has been contended that the risk of the claimant is not covered under the policy. The claimant is below the age of 17 years and as such he was not working as a cleaner.

d) The claimant has adduced oral and documentary evidence in support of his contentions. Respondent insurer has not adduced any evidence. Learned Chairman of the Tribunal by its judgment and award dated 16.10.2008 partly allowed the claim petition with proportionate costs and thereby held that the claimant is entitled for compensation of Rs.4,05,000/- from respondent nos. 1 to 3 jointly and severally including the amount of no fault liability. Hence, this appeal.

3. Learned counsel for the appellant insurer submits that the respondent claimant was below the age of 17 years and as such, there was no reason for the owner of the truck to employ him as a cleaner on the said truck. The respondent claimant was travelling in the said truck as passenger and therefore, the risk of the passenger travelling in goods truck is not covered under the policy. Thus, the

appellant insurer is not liable to pay any compensation.

4. The learned counsel for the respondent-original claimant submits that one police head constable, after recording statement of witnesses, including the respondent claimant, had lodged complaint Exh.31 on behalf of State. The accident had taken place on 2.3.2006. The complaint was also lodged on the same day in the concerned police station. It has been specifically mentioned in the complaint Exh.31 that the respondent claimant Dattu Mote was working on the said truck as a cleaner and he got injured in the said accident. Learned counsel submits that the original school leaving certificate is placed on record and on perusal of the same, it appears that date of birth of the respondent claimant is 24.6.1987 and as such he was 19 years of age on the date of accident. Learned counsel submits that the respondent owner has not appeared before the Tribunal though duly served. Thus, the Tribunal has rightly awarded the compensation. There is no merit in the appeal and the appeal is thus liable to be dismissed.

5. On perusal of pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the police head constable, who has lodged the complaint on behalf of the State, has recorded the statements of eye witnesses, including the respondent

original claimant. It has been specifically mentioned in the complaint Exh.31 that the respondent claimant was travelling in the said truck as a cleaner and as such he sustained the injuries in the accident. The appellant insurer has not examined any witness to substantiate its defence. As per the school leaving certificate, the respondent claimant was above the age of 19 years at the time of accident. Respondent owner has not appeared before the Tribunal though duly served. In view of same, I do not find any merits in the appeal.

6. So far as the quantum of compensation is concerned, it appears that the Tribunal has awarded just and reasonable compensation. Even though the respondent claimant was working as a cleaner on monthly salary of Rs.3000/-, the Tribunal has considered his income at Rs.15,000/- per annum and awarded the compensation. In view of the same, there is no merit in the appeal. Hence, I proceed to pass the following order.

O R D E R

- I. The first appeal is hereby dismissed with costs.
- II. The respondent claimant is permitted to withdraw the balance amount.

III. The respondent-claimant has withdrawn Rs.1,50,000/- on furnishing surety. Since the appeal is now disposed of, the surety furnished by the respondent claimant stands discharged.

IV. First appeal is accordingly disposed of.

V. Pending civil application is also disposed of.

(V. K. JADHAV, J.)

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