IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1242 OF 2014

SANDIP JAGANANTH SANAP AND ANOTHER
VERSUS
MEERABAI DNYANDEO DHANDE AND OTHERS
...
Advocate for Appellants : Mr. Chapalgaonkar Shailesh S.
Advocate for Respondent 7 : Mr. Avinash Deshpande
...

CORAM : V. K. JADHAV, J.
DATED : 16th JANUARY, 2017

PER COURT:-

1. Being aggrieved by the judgment and award passed by the Motor Accident Claims Tribunal, Beed dated 6.2.2014 in M.A.C.P. No. 198 of 2010, the original respondent Nos. 1 and 2/owner and driver, have preferred this first appeal.

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

a) On 3.7.2010, deceased had been to village Pimpargavan to meet his daughter. After meeting his daughter, he had been to Beed and purchased fertilizers and grocery articles. He was intending to return back to village Limba. In the meantime, respondent No.2, who happened to be friend of deceased Dnyandeo, was going via Navgan Rajuri in his truck, bearing registration No. MH-23-5765. Thus, deceased Dnyandeo sat in his truck alongwith his goods. On way, at about 4.30 p.m., the appellant no.2 drove the said truck in rash and negligent manner and in consequence of which the truck turtled and deceased Dnyandeo fell down on the road and truck fell on the person of deceased Dnyandeo and he died on the spot.

b) The respondents / claimants, who are legal representatives of deceased Dnyandeo, filed M.A.C.P. No. 198 of 2010 before the M.A.C.T. Beed for grant of compensation under various heads, against the appellants and respondent No.3 - insurer.

c) The original respondent no.1 / appellant i.e. owner of truck has not denied the accident. According to him, the vehicle involved in the accident is insured with present respondent No.7 and thus, present respondent No.7 is liable to satisfy the award, if passed against him.

d) The respondent - insurer has resisted the claim petition by filing written statement Exh.22 on various grounds. Though it has been admitted that the said truck was insured with respondent No.7, however, it was contended that the driver of the said truck had no valid driving licence to drive the vehicle involved in the accident. It has also contended that deceased Dnyandeo was travelling in the truck as passenger in goods vehicle and his risk is not covered under the policy. The truck involved in the accident was being used to carry passengers, which is in contravention of the terms and conditions of policy and, therefore, the said respondent is not liable to pay the compensation.

e) The claimants as well as respondent No.1 owner and respondent No.3 insurer adduced oral as well as documentary evidence in support of their rival contentions. Learned Member of the Tribunal, by judgment and award dated 6.2.2014 partly allowed the claim petition with costs, thereby directing the appellants to pay jointly and severally compensation of Rs.5,19,000/- inclusive of amount under no fault liability with interest at the rate of 6% p.a. from the date of petition till its realization. The claim petition is dismissed as against respondent no.3-insurer. Being aggrieved by the dismissal of claim petition against respondent no.3 insurer, the appellants i.e. owner and driver of the truck have preferred this first appeal.

3. Learned counsel for the appellants submits that, the insurance policy is placed on record and the same is marked at Exh.48. Respondent-insurer has accepted the premium for non fare paying passenger one under IMT No. 37. The respondent insurer has examined its Assistant Manager, who has deposed that the person who is authorized by the owner to travel in the truck as passenger is only insured under the said clause by referring the IMT no. 37, and if

any such person is travelling as passenger in truck without any authorization from owner of the vehicle, his risk is not covered. Learned counsel submits that on perusal of IMT no. 37, it is nowhere stated that risk of passenger, who is not authorized by the owner to travel in the vehicle, is not covered. Learned Member of the Tribunal has observed that deceased Dnyandeo was non-fare paying passenger and he was travelling in the vehicle i.e. truck involved in the accident alongwith his goods. The Tribunal has not considered the contents of the policy as well as IMT no. 37 and thus, erroneously exonerated the respondent insurer.

4. Learned counsel for respondent insurer submits that the respondent insurer has examined its Assistant Manager, who has explained that the said premium under IMT 37 was accepted for the passenger authorized by the owner travelling in the vehicle involved in the accident. The said witness was not subjected to cross examination by the owner so far as the contents of policy IMT 37 are concerned. Learned counsel submits that the policy does not cover the risk of passenger travelling in the goods vehicle and the learned Member of the Tribunal has therefore, rightly exonerated the respondent insurer from the liability to pay compensation alongwith the owner. No interference is required.

. In order to substantiate his submissions, learned counsel for the respondent, placed reliance on the judgment of Gauhati High Court in the case of ***New India Assurance Co. Ltd. vs. B. Lalrosanga and another, reported in 2012 ACJ 2172***.

5. On perusal of the contents of policy Exh.48, it appears that the respondent insurer has accepted extra premium of Rs.75/- to cover the risk of non fare paying passenger under clause IMT no.37. The Motor policy Schedule/certificate of the insurance is produced on record and the same is marked Exh.66. The IMT 37 is referred in the said document and the same is re-produced herein below:-

> ***"IMT 37. Legal Liability to Non-Fare Paying passengers other than Statutory Liability except the Fatal Accidents Act, 1855 (Commercial Vehicles Only).***
>
> *In consideration of the payment of an additional premium of Rs.___ and notwithstanding anything to the contrary contained in Section II-1(b) and (c) it is hereby understood and agreed that the Company will indemnify the Insured against his legal liability other than liability under the Statute (except the Fatal Accidents Act 1855) in respect of death of or bodily injury to:-*
>
> > *i) Any employee of the within named insured who is not a workman within the meaning of the Workmen's Compensation Act prior to date of this endorsement and not being carried for hire or reward.*

ii) Any other person not being carried for hire or reward provided that the person is

a) charterer or representative of the charterer of the truck

b) Any other person directly connected with the journey in one form or other being carried in or upon or entering or mounting or alighting from any Motor Vehicles described in the schedule of the policy

Subject otherwise to the terms exceptions conditions and limitation of this policy."

6. On careful perusal of the contents of the policy as well as IMT 37, it appears that the respondent insurer by accepting extra premium covered the risk of the non fare paying passenger and the case of deceased falls under IMT 37 clauses ii-a and ii-b. Admittedly, deceased Dnyandeo was travelling in the truck alongwith his goods. In the case of ***New India Assurance Co. Ltd. vs. B. Lalrosanga and another*** (supra) relied upon by learned counsel for the respondent insurer, the Gauhati High court in para 12 has observed that though the deceased was a non fare paying passenger in respect of the goods carrying vehicle, she was neither an employee nor the owner or representative of the owner of the goods or charterer or representative of charterer of the vehicle or a person directly connected with the journey in one form or other was stipulated in IMT 13. In the instant case, deceased Dnyandeo was

travelling alongwith his goods and the respondent insurer has accepted extra premium under IMT 37 and thus, risk of such non fare paying passenger travelling in goods vehicle is covered. Even the witness examined by the respondent insurer has admitted in his cross examination that it is nowhere mentioned in the terms and conditions of the policy that risk of passenger, who is not authorized to travel in the vehicle by its owner, is not covered under policy.

7. In view of the above discussion, the impugned judgment and award passed by the learned Member of the Tribunal needs to be modified. Hence, I proceed to pass the following order:-

O R D E R

I. The appeal is hereby partly allowed.

II. The judgment and award passed by the Member, M.A.C.T. Beed dated 6.2.2014 in M.A.C.P. No. 198 of 2010 is set aside to the extent of dismissal of claim petition as against respondent No.3 insurance company (respondent No.7 herein).

III) The judgment and award passed by the learned

Member, M.A.C.T. Beed is hereby modified in the following manner:-

“The respondent Nos. 1 to 3 do pay jointly and severally total compensation of Rs.5,19,000/- inclusive of amount under 'no fault liability' with interest at the rate of 6% p.a. from the date of petition till its realization.”

IV. The rest of the judgment and award stands confirmed.

V. The award be drawn up as per the above modification.

VI. First appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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