IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1391 OF 2015

M/S IFFCO-TOKIO GENERAL INSURANCE CO. LTD.
VERSUS
VINAYAK DNYANOBA SURYAWANSHI DIED THR HIS LRS SUNITA VINAYAK SURYAWANSHI AND OTHERS
...
Advocate for Appellant : Mr. Upadhye Vinayak Narayan
Advocate for Respondents : Mr. Mahesh K. Bhosale h/f Mr. A.A. Kakad
.....

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

PER COURT:-

1. Being aggrieved by the judgment and award passed by the learned Member, M.A.C.T. Nilanga dated 30.12.2014, in M.A.C.P. No. 44 of 2009, the original respondent No.4 insurer has preferred this appeal.

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

a) On 17.8.2008, the claimant Vinayak was returning to his village Ambulga by Auto Rickshaw bearing registration MH-25-B-5213. On way, one tractor alongwith trailer bearing registration No. MH-24-D 4014 and trailer bearing registration No. MH-25-E-2515 driven by respondent No.1 came from opposite side in a very high speed and head of the tractor gave dash to the auto rickshaw. In consequence of which, the auto rickshaw turned turtle towards left side of the road, which resulted into causing multiple fracture injuries to the claimant. He was immediately shifted to sub district hospital, Nilanga and thereafter Civil Hospital, Latur. The respondent claimant has sustained fracture injuries to his right forearm, right thigh, femur, and grievous injuries to both the eyes. He was also operated in the hospital and a rod was inserted in his leg. Even after the discharge, again in the month of February, 2009, he was operated on his left thigh and hip joint. On account of the injuries sustained by him in the accident, the claimant had sustained permanent disablement. He has also incurred huge amount for medical expenses. The permanent disablement sustained by him also affected his earning capacity to some extent. The claimant Vinayak therefore, has filed claim petition bearing M.A.C.P. No. 44 of 2009 before the M.A.C.T. Nilanga for grant of compensation under various heads. During pendency of the petition, the claimant Vinayak died. His legal heirs were brought on record.

b) Respondent No.1 has resisted the claim by filing written statement at Exh.19. It has contended that the said Auto Rickshaw was overloaded and it was driven in very high speed. The auto rickshaw driver lost his control and dashed against the tractor. Respondent No.4 insurer has also resisted the claim by filing written statement Exh.16. It has denied that accident occurred on account of rash and negligent driving of the driver of tractor. It has also contended that only the tractor involved in the accident was insured and the trailer was not insured and therefore, there was breach of the policy condition and thus respondent No.4 insurer is not liable to pay compensation on account of said breach of the policy.

c) Learned Member of the Tribunal by its impugned judgment and award partly allowed the claim petition and thereby directed the respondents jointly and severally to pay compensation of Rs.1,50,000/- inclusive of no fault liability, to the claimants with interest at the rate of 6% p.a. from the date of petition till realization. Hence, this appeal.

3. Learned counsel for the appellant submits that the trailer attached to the tractor was not insured and therefore, there was breach of policy condition. Learned counsel submits that the Auto Rickshaw involved in the accident was also overloaded and driver of the said Auto Rickshaw had driven the same in excessive speed, thus the auto rickshaw could not stop and dashed against the tractor.

4. Learned counsel for the respondents claimants submits that the learned Member of the Tribunal has considered the evidence led

by the parties and rightly granted compensation. No interference is required.

5. On careful perusal of pleadings of the parties and the documents placed on record, it appears that the head of the tractor gave dash to auto rickshaw. The claimant Vinayak, who was alive at the relevant time, deposed before the Court below that he was travelling in the auto rickshaw and on way, one tractor came from opposite direction in high speed and dashed to the auto rickshaw. In consequence of which auto rickshaw overturned in which Vinayak sustained multiple fracture injuries. The F.I.R. Exh.76, spot panchnama Exh.77 and injury certificate Exh.78 support his contentions.

6. I do not find any substance in the submissions that there has been breach of the policy condition on the count that the trailer attached to the tractor was not insured at the time of accident. In fact, the trailer cannot move on its own and at the most if the trailer is insured, which can be for its own damage by accepting the premium. Furthermore, when the tractor head gave dash to the auto rickshaw the question of insurance or non insurance of the trailer requires no consideration.

7. In view of the above, I do not find any fault in the judgment and award passed by the Tribunal as the same is passed by considering entire evidence on record and granted very reasonable amount of compensation. Hence, I proceed to pass the following order:-

O R D E R

I. The appeal is hereby dismissed.

II. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

rlj/