

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 612 OF 2002
WITH
CIVIL APPLICATION NO. 2583 OF 2001

Sadashiv s/o Dhondiba Sidapure
Age 36 years, Occ. Agricultural
and Transport, R/o. Sonkhed
Tq. Loha, District Nanded

...Appellant

versus

1. Pandit s/o Manikrao Wadkar
Age 25 years, Occ. Agriculture
R/o. Khadak-Manjri, Tq. Loha,
District Nanded

2. The Branch manager,
Oriental Insurance Company Ltd.
Branch at Nanded

...Respondents

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Mr. A.S. Golegaonkar, advocate for the appellant
Mr. S.M. Godsay with Mr. V.N. Upadhye, advocates for respondent No.2.

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CORAM : V. K. JADHAV, J.
DATED : 27th MARCH, 2017

ORAL JUDGMENT:-

1. Heard learned counsel for the respective parties.
2. Being aggrieved by the judgment and award dated 21.10.2000, passed by the Member, Motor Accident Claims Tribunal, Nanded, in M.A.C.P. No. 504 of 1996, the original respondent No.1-

owner preferred this appeal.

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

a) On 6.2.1996, at about 11.00 a.m. the claimant left his village alongwith his father. On that day, he started returning to his village in a jeep bearing registration No. MH-26-5220. On way, at the request of the passengers, the driver of the said jeep stopped his vehicle and passengers started getting down from the vehicle. However, when the claimant was alighting from the said vehicle, the driver without waiting for the complete alighting of the claimant, started the jeep and proceeded ahead with the vehicle. In consequence of which, the claimant lost his balance and fell down on the road and sustained injuries on his back and head. The claimant was referred to Primary Health Center, Loha and thereafter shifted to Guru Govindsinghji Memorial Hospital, Nanded. He was remained there as indoor patient for a period of 21 days. He has also lost his earnings during that period. On account of head injury sustained by him, he suffered from giddiness and also has become permanently disabled. Thus, the claimant has approached the Tribunal by filing M.A.C.P. for grant of compensation under various heads.

b) It has been contended in the claim petition that the claimant

has incurred medical expenses and he has suffered permanent disablement. He has also suffered pains. He has claimed compensation of Rs.1,00,000/-.

c) The appellant has strongly resisted the claim petition on the ground that the claimant sustained injuries on account of his own negligence. It has been contended that the claimant has not taken proper precaution while alighting from the vehicle-jeep. It has been contended that the claimant has sustained only simple injuries and he has not sustained any permanent disablement as such. It has been contended that the jeep involved in the accident is insured with respondent No.2 and hence, respondent No.2 is liable to satisfy the award.

d) Respondent No.2 insurer has resisted the claim petition on the ground that jeep vehicle is permitted to be used only for private purpose, however, it has been used for carrying fare paying passengers. It has been specifically contended that the claimant was travelling in the said jeep from Loha to Khadak Manjri, as fare paying passenger and there has been breach of specified condition of the policy.

e) The claimant has adduced his oral as well as documentary

evidence and the appellant owner has also adduced his oral evidence and examined one more witness. Respondent No.2 insurer has not adduced any evidence.

f) The learned Member of the Tribunal by its impugned judgment and award partly allowed the claim petition and held that the claimant do recover the amount of Rs.30,000/- as compensation alongwith proportionate costs and interest at the rate of Rs.12% p.a. from the date of petition till realization of the entire amount from the appellant owner alone and dismissed the claim petition as against the respondent insurer. Hence, this appeal.

4. It appears from the memo of appeal that the appellant owner has challenged the judgment and award passed by the Tribunal mainly on the ground that the claimant met with an accident out of his own negligence. It has been contended that the appellant was driving the jeep at the time of accident and vehicle was in stationary condition when the claimant was alighting from the vehicle. Witness No.2 Vijay Holge, examined by the appellant owner, has stated on oath before the Tribunal that the claimant Pandit slipped and fell down on the road on account of his own fault. He has further deposed that jeep vehicle was stationary and even the appellant owner has stopped his jeep. He has further stated that due to ill

health, the claimant could not keep proper balance and hence, fallen down as his leg was slipped. It further appears from the appeal memo that the claimant has sustained only 10% dis-figuration and there is no question of any loss of income as such. It also appears that the appellant owner has challenged the finding recorded by the Tribunal exonerating the respondent insurer from the liability to pay the compensation.

5. Learned counsel for the respondent insurer submits that the claimant Pandit has admitted in his cross examination that after paying the fare, he started travelling in the jeep involved in the accident. Admittedly, the jeep involved in the accident is a private vehicle and passengers could not have been carried in private vehicle by accepting fare charges. There is clear cut breach of the terms and conditions of the policy and the Tribunal has rightly exonerated the respondent-insurer from liability to pay the compensation.

6. On careful perusal of evidence and the judgment and award passed by the Tribunal, it appears that claimant Pandit has deposed that, on way the vehicle jeep was stopped one kilometer away from the village and the driver asked the passengers to get down from the jeep. The driver made haste while the passengers were alighting

from the vehicle. He started the vehicle and proceeded ahead. Even though the claimant had requested the driver to wait, but the driver has not paid any heed to his request and consequently the claimant was thrown off the jeep while alighting and sustained injuries on back and head. The jeep vehicle was driven by the appellant at the relevant time is not disputed. The appellant owner has not pleaded that at the time of accident, the jeep was stationery and claimant could not keep his balance while alighting from the jeep and thus sustained the injuries on his own fault. It has been pleaded by the appellant owner that the claimant has not taken precaution while alighting from the jeep. However, he has failed to raise the plea that vehicle jeep being driven by him, at the time of accident, was stationery when the claimant started alighting from the jeep. However, the appellant owner has stated so in his evidence before the Tribunal and added that the jeep was stationery and he had stopped the jeep. Thus, the evidence without any pleading is liable to be ignored. The witness Vijay Holge has deposed in the same line. However, his evidence is also liable to be ignored as there is no specific pleading raised by the appellant owner in this regard. On the other hand, the Tribunal has also observed that considering the injuries sustained by the claimant on his back and head, the same is not possible only by alighting from stationery vehicle. I am in agreement with the said observations. Due to jerk of moving jeep the

claimant while alighting from the jeep thrown off the jeep and sustained injuries on his back and head by falling on road. The learned Member of the Tribunal has therefore rightly recorded the finding that the accident has taken place due to rash and negligent driving on the part of driver of the jeep alone i.e. appellant.

7. So far as exoneration of the respondent insurer is concerned, the claimant Pandit has admitted in his cross examination that on the day of accident, there were 16 to 20 passengers in their vehicle and all of them of his village. All of them, including himself gave hire charges of Rs.5/- to the driver of vehicle during the journey, while returning to the village. It is well settled that in order to discharge the burden of proving defence, the respondent-insurer may adduce oral or documentary evidence or even may place reliance on the evidence led by other side. Since the claimant has admitted unequivocally in his cross examination about fare paid to the driver of the jeep (appellant) for travelling in the jeep involved in the accident, the learned Member of the Tribunal has rightly exonerated the insurance company from the liability to pay compensation alongwith the appellant owner. So far as the quantum of compensation is concerned, though the claimant has claimed exorbitant amount of compensation, the learned Member of the Tribunal has awarded just and reasonable compensation of Rs.30,000/-. The Tribunal has

awarded Rs.10,000/- towards pains and agony, Rs.10,000/- towards incidental expenditure for medicines, transportation charges etc. and Rs.10,000/- towards loss of so called faculty i.e. Rs.10% disfiguration, as shown in the disablement certificate Exh.52. I do not find any fault in the determination of compensation. There is no merit in the appeal. The appeal is thus liable to be dismissed. Hence, I proceed to pass the following order:-

O R D E R

- I. First appeal is hereby dismissed with costs.
- II. First appeal is accordingly disposed of.
- III. The claimant is entitled to withdraw the amount, if deposited in this Court.

8. In view of disposal of first appeal, pending civil application is also disposed of.

(V. K. JADHAV, J.)

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