

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1221 OF 2003
WITH
CIVIL APPLICATION NO. 5586 OF 2000

The New India Assurance Company Ltd.
having its registered and head office
at New India Assurance Building,
87, M.G. Road, Fort Mumbai and
having its Branch and Divisional
office, Rajendra Prasad Road
(Adalat Road, Aurangabad

...Appellant

versus

1. Abdul Hakim Abdul Gafoor
Age 48 years, Occ. Business,
R/o. Vaijapur, Taluka Vaijapur
District Aurangabad
2. Vijaykumar Nemichand Bothra
Age major, Occ. Business,
R/o. Vaijapur, Dist. Aurangabad
3. Dadarao @ Bandu Phulari
(deleted as per Court's order
dated 4.3.2004)

(Ori. Claimant)

...Respondents

.....
Mr. D.S. Kulkarni, advocate for the appellant
Mr. P.P. Mandlik, advocate for respondent No.1
Mr. P.F. Patni, advocate for respondent No.2.
.....

CORAM : V. K. JADHAV, J.
DATED : 5th JULY, 2017

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and award dated 22.10.1999
passed by learned Member, M.A.C.T. Aurangabad in M.A.C.P. No. 177

of 1992, the original respondent No.3 insurer has preferred this appeal.

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

a) On 23.3.1991, the driver of the tractor was driving the tractor attached with the trolley by left side of the road, in moderate speed on Vaijapur Aurangabad road. On way, one matador, bearing registration No. MH-04-C-217 coming from opposite direction, went to wrong side of the road and gave dash to the tractor. In consequence of which, the damages were caused to the said tractor. It has been alleged that the tractor was completely broken. Steering wheel, radiator, gear box, filter, silencer, dynamo and many parts of the tractor were completely damaged. The respondent original claimant has thus approached the Tribunal by filing M.A.C. No. 177 of 1992 for grant of compensation. It has been contended in the claim petition that the claimant has incurred expenses to the tune of Rs.86,090/- for repairs of the said tractor and respondent Nos. 1 to 3 are jointly and severally liable to pay the same.

b) Respondent Nos. 1 and 2 have not filed any written statement and therefore the hearing of claim petition ordered to be proceeded without their written statement.

c) The appellant insurer has strongly resisted the claim petition by filing its written statement. It has been contended that the driver of the

tractor himself was negligent in driving it and there is no negligence on the part of driver of matador. The appellant has denied the claim for damages, as claimed in the petition. It has also been contended that respondent No.2 driver of the matador was under influence of liquor while driving the matador and as such the appellant insurer is not liable to pay the compensation.

d) The respondent original claimant had adduced oral and documentary evidence. The appellant insurer has not adduced any evidence. Learned Member of the Tribunal, by judgment and award dated 22.10.1999 partly allowed the claim petition and thereby directed the respondents, including the appellant insurer, to pay jointly and severally an amount of Rs.83,590/- with proportionate costs alongwith interest @ 12% p.a. from the date of application. Hence, this appeal.

3. Learned counsel for the appellant insurer submits that this appeal is restricted to the extent of quantum of compensation as awarded by the Tribunal. The Tribunal has assessed the damages caused to the tractor on the basis of spot panchnama Exh.24. Though the respondent original claimant has produced on record the bills and cash memos and even though those documents are exhibited by the Tribunal, the respondent original claimant has not duly proved those documents and as such there was no material before the Tribunal to consider the damages caused to the tractor and the expenditure

incurred towards repairs, except the bare words of the respondent original claimant.

4. Learned counsel for the respondent original claimant submits that the Tribunal has considered the spot panchnama Exh.24 to find out the damages caused to the tractor. It has been specifically mentioned in the spot panchnama Exh.24 that steering wheel, radiator gear box, filter, silencer, dynamo and many parts of the tractor were completely damaged. The respondent original claimant has produced on record the cash memos Exh.26 to Exh.37. The appellant insurer has not raised any objection when the Tribunal has exhibited those documents. Thus, after considering the said documents Exh.26 to 37, the Tribunal has awarded just and reasonable compensation. There is no substance in the appeal and the same is thus liable to be dismissed.

5. On careful perusal of spot panchnama Exh.24, I find that the damages caused to the tractor has been mentioned in the spot panchnama in detail. Even roughly the amount of the said damages is shown at Rs.85,000/- to Rs.90,000/-. It further appears from the record that the Tribunal has exhibited the said cash memos and awarded compensation as per the total amount of said cash memos placed on record. On careful perusal of cash memos, I find that the serial number of cash memos are correctly mentioned date wise and there is no reason to discard the the cash memos. The appellant insurer, for the

first time, raised objection to those documents on the ground that the respondent claimant has not duly proved those documents and as such, those documents cannot be read in evidence.

6. In view of above discussion, I do not find any fault in the judgment and award passed by the Tribunal. There is no substance in the appeal. The appeal is thus liable to dismissed. The appeal is accordingly, dismissed with costs.

7. If the amount is deposited before this Court, the respondent claimant is entitled to withdraw the same. The appeal is disposed of.

8. Pending civil application is also disposed of.

(V. K. JADHAV, J.)

rlj/