IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1807 OF 2016

Laxmibai Digambar Masalgekar,
Age 54 years, Occu. Agri./Labour
R/o Bhagnoorwadi, Tq. Mukhed,
Dist. Nanded.

...APPELLANT
(Orig.Claimant)

VERSUS

1. Sambhaji Madhav Pillewad,
Age 30 years, Occu. Business,
R/o. Bhagnoorwadi, Post Chandola,
Tq. Mukhed, Dist. Nanded.

(Owner of Bajaj Auto bearing
No.MH-26 AC 1974)

2. The New India Assurance Co.Ltd.,
Through its Branch Manager,
Branch at Lahoti Complex, Near
Prabhat Talkies, Vazirabad,
Nanded (M.S.).

...RESPONDENTS

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Mr. Sachin G.Joshi, Advocate, for the appellant.
Mr. A.B.Shinde, Adv., for respondent no.1.
Mr. S.R.Bodade, Advocate for respondent no.2.

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CORAM: P.R.BORA, J.

DATE : JULY 21st, 2017

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ORAL JUDGMENT:

1. Present appeal is filed against judgment and award passed by the Motor Accident Claims Tribunal at Mukhed in MACP No.69/2013 on 24th of February, 2016.

2. The present appellant, who is original claimant, had filed the aforesaid claim petition, claiming compensation for injuries received to her in an accident happened on 8th of April, 2013, while she was travelling in the Auto Rickshaw bearing registration No.MH-26-AC-1974. It was the contention of the appellant that the alleged accident happened because of rash and negligent driving of the driver of the said vehicle. The said auto rickshaw was owned by present respondent no.1 and was insured with present respondent no.2. The claimant had claimed compensation of Rs.1,00,000/-(Rs. one Lakh). The claimant herself deposed before the Tribunal and claimed compensation, based on certain documents pertaining to her treatment.

3. The petition was opposed by respondent no.2 Insurance Company by taking several defenses. The Insurance Company had taken a defense of breach of policy conditions by the owner of the said auto rickshaw. It was alleged that by carrying fare paying passenger in an auto rickshaw for private use the owner committed the breach of policy conditions. The objection as about valid driving license with the driver of the said auto rickshaw was also raised by the Insurance Company.

4. Learned Tribunal after having assessed the evidence brought on record, held the appellant entitled for the compensation of Rs.79, 200/-, however, directed the payment of compensation only from respondent no.1 i.e. the owner of the auto rickshaw, and exonerated the Insurance Company from its liability, holding that the owner of the said auto rickshaw had committed breach of the policy condition. Aggrieved thereby the claimant had preferred the present appeal.

5. Learned Counsel appearing for the appellant submitted that the Tribunal has manifestly erred in

reaching to the conclusion that the appellant was a fair paying passenger in the offending auto rickshaw. Learned Counsel submitted that it has nowhere come on record that the appellant was a fair paying passenger in the said auto rickshaw. Learned Counsel, inviting my attention to the cross examination of the appellant by the Insurance Company, submitted that, in the cross examination the appellant had clarified that the auto rickshaw was belonging to her relatives and, as such, she was travelling in the said auto rickshaw without paying any fare. Learned Counsel submitted that the fact so stated by the appellant has not been controverted in the further cross examination. Learned Counsel further submitted that the Insurance Company did not adduce any evidence to substantiate the defense raised by it. In the circumstances, according to the learned Counsel, the Tribunal has recorded incorrect finding that the Insurance Company has established breach of terms and conditions of the policy by the owner of the auto rickshaw. Learned Counsel, therefore, prayed for setting aside the finding so recorded by the Tribunal and, consequently, hold the Insurance Company jointly and severally liable to pay the amount of compensation to the claimants.

6. It was also argued by the learned Counsel for the appellant that the Tribunal has erred in not awarding interest on the amount of compensation from the date of filing of the petition and the same has been wrongly made payable from 29th January, 2016.

7. Shri Bodade, learned Counsel appearing for the respondent Insurance Company, has supported the impugned judgment and award. Learned Counsel submitted that the Tribunal has rightly held that the owner of the auto rickshaw has committed breach of policy conditions and, as such, no liability could have been fastened on the Insurance Company to pay the amount of compensation.

8. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and evidence on record. After having perused the impugned judgment and evidence on record, it is

apparently revealed that the Tribunal has recorded an wholly unsustainable conclusion that the owner of the auto rickshaw has committed breach of the policy condition by carrying fare paying passenger in the said auto rickshaw which was meant for private use. There is absolutely no evidence to suggest that the appellant was a fare paying passenger in the insured auto rickshaw. On the contrary, in the cross examination, to a specific question asked to the appellant / claimant; whether she was travelling as a fare paying passenger in the auto rickshaw, the claimant seems to have given an answer that the auto rickshaw belonged to her relative and, as such, there was no question of paying any fare. The fact so deposed by the claimant in her cross examination has neither been controverted in her further evidence nor any specific evidence has been adduced by the Insurance Company so as to prove that the appellant was a fare paying passenger in the said auto rickshaw. In absence of any such evidence, it is not understood as to on what basis the Tribunal has recorded a finding that the claimant was a fare paying passenger and that by carrying fare paying passenger in the private auto rickshaw, breach of the policy condition was committed by the owner so as to exonerate the Insurance Company from its liability. Admittedly, no evidence was adduced by the Insurance Company in order to prove the defenses raised by it in its written statement. In absence of any evidence, the conclusion recorded by the Tribunal cannot be sustained and deserves to be set aside.

9. From the evidence it is quite obvious that the claimant was not a fare paying passenger and was travelling in the auto rickshaw which belonged to her relative. In such circumstances, there was no breach committed by the owner of the auto rickshaw; at least, the said breach has not been proved by the Insurance Company by bringing on record any positive evidence.

10. In so far as the other defense raised by the Insurance Company as about driving license of the driver, the Tribunal has brushed aside the said objection. Moreover, the Insurance Company has also not brought on record any evidence showing that the driver of the auto rickshaw was not holding valid driving license. The said

objection is also liable to be rejected.

11. In the body of the judgment the Tribunal has nowhere assigned any reason as to why the interest has not been awarded from the date of filing of the petition. To that extent also, the award needs to be modified.

12. After having considered the entire material on record, I have no doubt in my mind that the Tribunal has erred in exonerating the Insurance Company from its liability to pay the amount of compensation to the claimants.

13. For the reasons stated above, the following order is passed:

ORDER

i) The impugned order as far as it relates to dismissal of the petition against respondent No.2 is quashed and set aside.

ii) Along with respondent No.1, respondent no.2 is held jointly and severally liable to pay the amount of compensation as has been determined by Tribunal to the tune of Rs. 79,200/- to the claimant with interest thereon at the rate of 6 per cent from the date of filing of the petition till its realization.

iii) Award be modified accordingly.

iv) Deficit court fee if any, be recovered.

. Appeal stands allowed in aforesaid terms.

(P.R.BORA)
JUDGE

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