

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

5 FIRST APPEAL NO. 2077 OF 2015

SHUKRACHRYA AATMARAM KHOSE
VERSUS
SAVITRIBAI SUKHDEO KAKDE AND OTHERS

...
Advocate for Appellant : Ashtekar R.K.
Advocate for Respondents : Deshpande Avinash S. for Resp 5

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CORAM : V.K. JADHAV, J.
DATE : 07-03-2017.

P.C. :

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the M.A.C.T. Ambajogai dated 16.03.2015 in M.A.C.P. No. 128 of 2007, the original respondent no.1 owner has preferred this appeal.
3. Brief facts giving rise to the present appeal are as follows.
4. On 01.10.2005 deceased Sukhdev was going to Waghalawadi to meet his son-in-law. At evening time he reached to Waghalawadi by Auto-Rickshaw. On reaching there he stepped from the auto and at that time one TVS Victor motorcycle bearing registration no. MH-24-N-1840 proceeding from Devla towards Ambajogai gave dash to deceased Sukhdev who was standing on the road. In consequence of which deceased Sukhdev had sustained severe injuries. He was immediately shifted to S.R.T.R.

Hospital, Ambajogai where he succumbed to the injuries on the same day at about 8.00 p.m.

The legal representative of deceased Sukhdev approached to the Tribunal by filing M.A.C.P. No. 128 of 2007 for grant of compensation under the various heads. It has been contended in the claim petition that deceased was an agriculturist by profession and was also doing the milk business and was earning Rs. 80,000/- per year. The claimants are entirely depending on his income, thus, the claimants have claimed the compensation of Rupees Three Lakhs under the different heads.

The appellant registered owner has raised two fold defence, according to him, the vehicle involved in the accident is duly insured with the respondent-insurer and the policy was subsisting on the date of the accident and also raised the defence that prior to the accident he sold the motorcycle to respondent no.3 Bhimrao Sarvade and handed over the possession thereof to him. Thus, the respondent no.3 is liable to pay the compensation. In the like manner respondent no.3 Bhimrao Sarvade has denied the responsibility to pay the compensation and he has also denied the sale transaction of the said motorcycle. It has been contended that the appellant had taken the custody of the bike involved in the accident from the Court by filing an application and thereby he has admitted his ownership.

The respondent-insurer has also resisted the claim petition by filing the written statement. It has been contended that the registered owner, by allowing unauthorized person to drive the vehicle involved in the accident, has committed breach of the terms of the policy and, therefore, the respondent-insurer is not liable to indemnify the claim on behalf of the registered owner. It has also been contended that change of the ownership was never communicated to the respondent-insurer and, therefore, the respondent-insurer is not liable to pay the compensation along with the subsequent owner.

The claimants have adduced oral and documentary evidence in support of their contention. The learned Member of the M.A.C.T., Ambajogai by its impugned judgment and award allowed the claim petition with proportionate cost and thereby directed the appellant to pay the compensation of Rupees Three Lakhs inclusive of the amount of N.F.L. to the petitioner with interest @ 6% per annum within two months from the date of this order. Being aggrieved by the same, the appellant registered owner has preferred this appeal.

5. The learned counsel for the appellant submits that, the Tribunal has erroneously exonerated the respondent-insurer from the liability to pay the compensation jointly and severally with the owner. The learned counsel submits that, the Tribunal, has given

weightage to the charges leveled against the rider of the motorcycle in the charge-sheet filed by the police. The learned Member of the Tribunal has observed that the rider of the motorcycle involved in the accident was not having valid and effective driving license and accordingly he was charge-sheeted by the police. The learned counsel submits that, the Tribunal, however, has not considered that the said rider of the motorcycle was subsequently acquitted by the criminal Court and the copy of the judgment of acquittal and order passed by the criminal Court is placed on record before the Tribunal. On perusal of the said copy of the judgment of acquittal, it appears that, the criminal Court has not leveled the charges against the accused for not having the license to drive the vehicle involved in the accident. Thus, only on the basis of the charges leveled in the charge-sheet it cannot be said that respondent-insurer has discharged its burden. The respondent-insurer has not examined any witness from the R.T.O. Office or even from the insurer's office to prove that there has been a breach of the specified conditions of the policy. The learned counsel submits that, in para no. 12 of the judgment, the Tribunal after scrutinising the oral and documentary evidence placed on record held that the appellant registered owner is liable to pay the compensation, however, erroneously exonerated the respondent-insurer from the liability to pay the compensation along with the owner.

6. The learned counsel for the respondent-insurer submits

that, after due investigation the concerned police station has submitted the charge-sheet against the rider of the motorcycle involved in the accident for having driven the vehicle involved in the accident without valid and effective driving license. The learned counsel submits that, the insurer can discharge the said burden either by adducing oral or documentary evidence or by placing the reliance on the evidence adduced by the claimants or other respondents. The claimants have produced on record the certified copy of the charge-sheet and the same is marked at exhibit-63. On perusal of the same, it appears that, the rider of the motorcycle came to be charge-sheeted under the provisions of Section 3/181 under the Motor Vehicles Act, 1998 and, thus, the respondent-insurer succeeded in discharging the burden. The respondent-insurer has proved that, the appellant has committed the breach of the condition of the policy. The learned Member of the Tribunal has, therefore, rightly exonerated the respondent-insurer from the liability to pay the compensation. The learned counsel submits that, the vehicle involved in the accident was transferred to respondent no.3 prior to the accident without any communication to the respondent-insurer in this regard. Thus, the respondent-insurer is not liable to pay the compensation on this ground also. The learned Member of the Tribunal has rightly exonerated the respondent-insurer. No interference is required in the impugned judgment and award.

7. The learned counsel for the respondent-insurer, in order to substantiate his contention placed reliance in the case of **National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Ors.** reported in **AIR 2009 SC 208**.

8. On careful perusal of the pleadings, evidence and the impugned judgment and award passed by the Tribunal, it appears that, the respondent-insurer has failed to prove its defence, though, the burden is on the respondent-insurer to substantiate its defence. On perusal of the charge-sheet exhibit-63, it appears that, the concerned police station has charge-sheeted the rider of the motorcycle involved in the accident for having committed the offence punishable under section 279, 304(a), 337 of Indian Penal Code and 134/177 and 3/181 of the Motor Vehicles Act, 1988. So far as the charge of 3/181 is concerned it speaks about driving of the motorcycle without having valid and effective driving license at the time of accident, however, on perusal of the record and proceedings, it appears that, the claimants have also produced on record the certified copy of the judgment of acquittal and the order passed by the criminal Court dated 21.04.2008, wherein, the criminal Court has acquitted rider of the motorcycle Ashok Dixit. On perusal of the said judgment, it appears that, the charges for the offences punishable under Section 279, 304(a), 337 of I.P.C. came to be framed against the rider of the motorcycle Ashok Dixit and accordingly the criminal Court has acquitted him for the aforesaid

offences. The criminal court has not framed the charge against the accused for having committed an offence punishable under Section 3/181 of the Motor Vehicles Act, 1988. Thus, mere filing of the charge-sheet by the police leveling certain charges is not sufficient. I do not think that, the respondent-insurer has discharged the burden of proving its defence about the breach of the policy condition in the form that the rider of the motorcycle was not having valid and effective driving license at the time of accident.

9. So far as, the other defence of the change of the ownership is concerned, the Tribunal, has held in para no. 12 of the judgment that the appellant registered owner has failed to substantiate the same. The appellant registered owner has preferred this appeal to the extent of the exoneration of the respondent-insurer from the liability to pay the compensation along with interest.

10. In view of the above, the Tribunal ought to have fastened the liability on the respondent-insurer to pay the compensation jointly and severally along with the appellant registered owner. Accordingly, I proceed to pass the following order:

ORDER

- i) Appeal is hereby partly allowed, no costs.
- ii) The judgment and award passed by the Member, M.A.C.T., Ambajogai dated 16.03.2015 in M.A.C.P.

No. 128 of 2007 is quashed and set aside to the extent of dismissal of the claim petition against original respondent no.2-insurer.

- iii) The judgment and award passed by the Tribunal dated 16.03.2015 in M.A.C.P. No. 128 of 2007 is hereby modified in the following manner.
- iv) The opponent no.1 Shukracharya Atmaram Khose and opponent no.2-insurance company do jointly and severally pay the total compensation of Rupees Three Lakhs inclusive of the amount of N.F.L. to the petitioner with interest @ 6% p.a. from the date of application till realisation of the entire amount.
- v) Rest of the judgment and award stands confirmed.
- vi) Award be drawn up as per above modification.
- vii) Appeal is accordingly disposed of.
- viii) The statutory amount as deposited by the appellant be refunded to the appellant-original respondent no.1.

(V.K. JADHAV)
JUDGE