IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2633 OF 2015
WITH
CIVIL APPLICATION NO. 10498 OF 2014
WITH
CIVIL APPLICATION NO. 9027 OF 2015

M/s. Shriram General Insurance Company Limited ...Appellant

versus

Ashabai Wd/o Shivaji Muley and others ...Respondents

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Mr. S.G. Chapalgaonkar, advocate for the appellant
Mr. C.D. Biradar, advocate for respondent Nos. 1 to 5

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CORAM : V. K. JADHAV, J.

DATED: 2nd FEBRUARY, 2017

PER COURT :-

1. By consent of the parties, heard finally at admission stage.

2. Being aggrieved by the judgment and award dated 20.1.2016 passed by learned Member, M.A.C.T. Jalna in M.A.C.P. No. 233 of 2011, the original respondent/insurer preferred this appeal.

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

a) On 1.10.2011, deceased Shivaji was proceeding by Jalna

Ambad road on motor cycle as pillion rider and one Ashok Dagdu Rathod was the rider of motor cycle. At 8.30 p.m. one truck bearing registration No. MH-12-AQ-2079 came from opposite side in high speed and gave dash to the motor cycle. In consequence of which, deceased Shivaji and said Ashok had sustained injuries. Deceased Shivaji immediately taken to the Rural Hospital at Ambad for medical treatment and from there to the Apex Hospital, Aurangabad. However, during the course of treatment, he succumbed to the injuries.

b) Legal representatives of deceased Shivaji preferred M.A.C. P. No. 233 of 2011 for grant of compensation under various heads. It has contended that deceased Shivaji was well built and healthy person. He was 45 years of age at the time of death. He was cultivating his agricultural land and earning Rs.6,00,000/- per year. The claimants are entirely depending on his income. It has also contended that the accident occurred due to rash and negligent driving of the driver of truck employed by respondent No.1. Respondent No.1 is owner of the said vehicle. At the relevant time, said vehicle truck was validly insured with respondent No.2. Thus, the claimants have claimed compensation of Rs.5,00,000/- against respondents, who are jointly and severally liable to pay the same.

c) Respondent Nos. 1 and 3 owner and driver, respectively, failed to file their written statement and therefore, hearing of claim petition ordered to be proceeded against them without their written statements.

d) The appellant insurer has strongly resisted the claim petition by filing written statement at Exh.17. It has contended that the said truck was not involved in the accident. Though, the accident occurred on 1.10.2011, however, complaint was filed in concerned police station after a gap of one and half month i.e. on 16.11.2011. It has therefore, contended that some unknown vehicle gave dash to the motor cycle of deceased and later on after some period, the story about involvement of said truck was planted. It was done with the assistance of police machinery. The appellant insurer therefore, disowned the liability on account of non involvement of the vehicle truck in the accident. It has also contended that it was revealed that deceased and his friend Ashok came across the road after alight from other vehicle and motor cycle suddenly came before unknown vehicle and as such, they themselves invited the accident. Said Ashok Rathod has driven the motor cycle on main high way without adhering to the traffic Rules and Regulations. Thus, said Ashok Rathod is responsible and contributed to the cause of accident. It has also contended that the said rider of motor cycle Ashok was not holding valid and effective driving licence to drive the motor cycle. It has also contended that the driver of truck was not holding valid and effective driving licence at the material time. Respondent No.1 owner of the vehicle has failed to submit the information regarding accident to the appellant insurer and also failed to furnish the details of driving licence of the respondent driver.

e) On the basis of rival pleadings of the parties, learned Member of the Tribunal has framed necessary issues at Exh.18 and both the contesting parties led their oral as well as documentary evidence in support of their rival contentions. Learned Member of the Tribunal held that the accident occurred on account of rash and negligent driving of the driver of said truck and appellant insurer has failed to prove that there was breach of terms and conditions of the insurance policy. Learned Member of the Tribunal has accordingly directed the respondent Nos. 1 to 3, jointly and severally, to pay Rs.4,62,500/- to the claimants, inclusive of 'no fault liability' amount with interest @ 7.5% p.a. from the date of petition till realization of entire amount. Being aggrieved by the same, the appellant insurer has preferred this appeal.

4. Learned counsel for the appellant insurer submits that though the accident had taken place on 1.10.2011, after a gap of one and

half months, i.e. on 16.11.2011 a false complaint came to be filed against the driver of offending vehicle i.e. respondent driver. There is collusion between the respondents/claimants and the respondent/ owner of the vehicle truck. After a gap of one and half months, story about involvement of the said truck was planted and it was done with the assistance of police machinery. The claimants have failed to prove the involvement of the said vehicle truck in the alleged accident. The claimant No.1 is not eye witness to the accident. The claimants have not examined any other witness to substantiate their contentions about involvement of the vehicle truck in the accident. Further, there is no evidence to prove rash and negligent driving on the part of driver of said truck. The respondent driver of the said truck was not holding valid and effective driving licence at the time of accident and there has been breach of specified conditions of the policy. In the inquest panchnama Exh.24, it has specifically mentioned that due to focus of headlight of ongoing vehicles, Ashok, rider of the motor cycle could not see the road, consequently, motor cycle went in the roadside ditch and accident had taken place. Learned counsel submits that ignoring all these facts, the Tribunal erroneously held that the appellant insurer is jointly and severally liable to pay compensation alongwith owner of vehicle truck.

5. Learned counsel for the respondents claimants submits that

respondent No.1 owner and respondent No.3 driver of vehicle involved in the accident have not contested the claim petition. It is thus clear that they have not denied the happening of accident. Furthermore, on the basis of F.I.R. dated 16.11.2011, Exh.22, crime No. 227 of 2011 came to be registered at police station Gondi against the driver of truck and after due investigation, concerned police submitted charge sheet Exh.21 against respondent driver of the truck. Learned counsel submits that as per the contents of F.I.R. Exh.22, the informant Ashok also sustained injuries in the accident and though he got information about involvement of the vehicle truck with its registration number, however, he could not file the complaint earlier, as he was taking treatment during that period. The said explanation is given in the complaint Exh.22 itself. The informant Ashok had referred the name of a waiter of Chaityna Dhaba, who has given information about said truck with its registration number. Learned counsel submits that there is evidence about involvement of vehicle in the accident. Since respondent Nos. 1 and 3 have not denied the accident by contesting the claim petition, on the basis of documentary evidence, as discussed above, the claimants have proved happening of the accident. Thus, by application of maxim *res ipsa loquitur,* entire burden shifts on respondent Nos.1 and 3 to prove that the accident has occurred on account of rash ad negligent driving of respondent driver of the truck. Learned counsel submits that the appellant insurer has not raised specific plea that the claim petition is preferred in collusion with the respondent owner and even this ground was not raised before the Tribunal. The appellant insurer has called upon concerned R.T.O. and accordingly said R.T.O. office has submitted a report at Exh.34, wherein it has submitted that the respondent driver of truck was having heavy motor vehicle licence covering the date of accident and he was fit to drive the offending truck. Learned counsel submits that the Tribunal has considered the claim petition from all angles and accordingly awarded just and reasonable compensation. No interference is required.

6. On perusal of pleadings and evidence adduced by the parties and the impugned judgment and award, it appears that the appellant insurer has not raised a plea that the respondents claimants have preferred claim petition in collusion with the respondent owner of the vehicle truck. The appellant insurer has submitted written notes of arguments Exh.38 before the Tribunal. In the said written notes of arguments, Exh.38, no such plea is raised. It thus appears that the appellant insurer has raised this ground for the first time in the appeal.

7. On careful perusal of F.I.R. Exh.22, it appears that though the accident had taken place on 1.10.2011, the complaint came to be

lodged on 16.11.2011. It further appears from the contents of F.I.R. Exh.22 that informant Ashok had tendered his explanation for lodging the complaint belatedly. He explained that he had sustained injuries in the said accident and he was also taking treatment for the same during that period. It has specifically stated in the complaint Exh.22 that one waiter viz. Kishor Gaikwad of Chaitnya Dhaba had informed him about involvement of said truck in the accident alongwith its registration number. It is also a matter of record that the accident had taken place on Jalna-Beed highway, near said Chaitnya Dhaba. In para 11 of charge sheet Exh.21, which pertains to the witnesses to be examined, name of said Kishor Gaikwad is appearing as witness. It has specifically stated in the complaint Exh.22 that said waiter Kishor Gaikwad has given details of involvement of vehicle truck in the accident with its registration number to the complainant. After due investigation, concerned police station has submitted charge sheet Exh.21 against respondent driver of the truck involved in the said accident.

8. Thus, there is prima facie evidence about involvement of said truck in the accident and happening of the accident. Respondent owner and driver have not contested the claim petition in any manner. They have not denied the accident and the involvement of the vehicle in the accident. Though the appellant insurer has not

raised any specific plea about collusion between the claimants and the respondent owner, as a matter of caution, I have gone through the details of residences of the parties. It appears that the claimants are residents of village Lalwadi Tanda, Tq. Ambad, District Jalna, whereas the respondent owner of the vehicle hails from District Solapur and the respondent driver is from village Deora, Tq. Chakur, District Latur. It is also a matter of record that after the accident, the driver of the vehicle truck involved in the accident, left the place of accident without giving any information to the police. At the time of drawing of inquest panchnama Exh.24, the dead body was identified by one Mukund More in the Apex Hospital. The informant Ashok Rathod was not present in the hospital when the inquest panchnama Exh.24 was drawn. Thus, it is not clear as to who has given information to the police while drawing the inquest panchnama on 3.10.2011 about the manner of the accident. The appellant insurer thus cannot take advantage of certain informations recorded in inquest panchnama Exh.24.

9. So far as the rash and negligent driving on the part of driver of the truck is concerned, the respondent claimant have proved fact of accident on the basis of police papers, such as charge sheet, Exh.21, F.I.R. Exh.22 and the post mortem report Exh.26. By application of maxim *res-ipsa loquitor,* the burden shifts on

respondent No.1 to prove that the accident was not the result of driving in rash and negligent manner on the part of driver of the truck. Failing therein, the Tribunal has rightly held the respondents jointly and severally liable to pay the compensation. So far as the defence of driving the truck involved in the accident without valid and effective driving licence by its driver is concerned, the report of R.T.O. Exh.34 unmistakenly points out that the respondent driver of the truck was holding valid and effective driving licence at the time of accident.

10. In view of above discussion, I do not find any fault in the impugned judgment and award passed by the learned Member of the Tribunal. No interference is required. Hence, I proceed to pass the following order:-

O R D E R

I. Appeal is hereby dismissed with costs.

II. The appeal is accordingly disposed of'

III. Pending civil applications are disposed of.

(V. K. JADHAV, J.)

rlj/