IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2141 OF 2015
WITH
CA/10122/2015 IN FA/2141/2015

DNYANOBA SHESHERAO NAWALE
VERSUS
YAMUNABAI VISHNU KOLHAPURE AND OTHERS.
...
Advocate for Appellant : Mr V D Gunale
Advocate for Respondents : Mr P K Wagh h/f A D Aghav
For Resp 1 And 2, S.V. Kulkarni Adv For Resp 3
...
CORAM : V.K. JADHAV, J.
Dated: February 06, 2017
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PER COURT :-

1. Heard finally with the consent at admission stage. Being aggrieved by the Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Ambajogai, dated 30.5.2015, in MACP No.64/2013, the original respondent owner has preferred this appeal to the extent of quantum and on the ground that the Tribunal has erroneously exonerated the insurer from liability to pay the compensation jointly and severally alongwith the owner.

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

a] On 25.5.2013 claimant Yamunabai alongwith deceased Mauli and complainant Balasaheb were returning to their home situated at village Fakir Jawala from their field. They were proceeding by Parli Vaijnath Beed road. At about 5.30 p.m., when they reached near bridge of road within limits of village Fakir Jawala, one Tempo bearing registration No.MH-22/2725 came from back side, gave forceful dash to deceased Mauli, in consequence of which deceased Mauli sustained multiple injuries and died on the spot. Thus, the parents of deceased Mauli preferred MACP No.64/2013 for grant of compensation under various heads. It has contended in the claim petition that accident had occurred on account of rash and negligent driving of the driver of the tempo. It has also contended that deceased Mauli was 13 years old at the time of accidental death and he used to graze cattle and was assisting parents in agricultural work. He was earning Rs.3,000/- p.m.

b] Appellant owner cum driver strongly resisted the claim petition by filing his written statement at Exh.16.

He has admitted the accident as well as ownership of the tempo involved in the accident, however, he has denied the allegations of rash and negligent driving of the said tempo at the time of accident. It has also contended that, he was holding valid and effective driving licence at the time of accident and as tempo involved in the accident is insured with respondent insurer, respondent insurer is liable to satisfy the award, if passed against him.

c] Respondent insurer has also resisted the claim petition by filing written statement at Exh.11. It has contended that, the appellant was not holding valid and effective driving licence and thus there was breach of the conditions of the policy.

d] The claimants have adduced their oral and documentary evidence in support of their contentions, however, respondents have not adduced any evidence. The appellant owner has produced on record his driving licence Exh.23. The learned Member of the Tribunal has observed that said driving licence was valid till

27.1.2013 and further held that respondent insurer is not liable to indemnify the claim on behalf of the owner.

3. The learned counsel for the appellant owner submits that, the Tribunal has erroneously exonerated the respondent insurer from liability to pay compensation. The learned Member of the Tribunal has considered the copy of the driving licence Exh.23 for that purpose. Learned counsel submits that, vehicle involved in the accident is goods carrying vehicle and accordingly, the respondent insurer has issued policy by accepting the premium for T.P. Basic, compulsory PA to owner-driver, WC to employee 8 and employees others 2. Learned counsel submits that on perusal of copy of the licence Exh.23, it is clear that, appellant owner cum driver is holding valid and effective driving licence to drive the transport vehicle till 14.11.2013. Learned counsel submits that the Tribunal has erroneously considered the non transport licence which is valid till 27.1.2013. Learned counsel submits that, in fact, non transport licence also came to be renewed and the same is also valid up to 19.5.2020. Learned counsel further

submits that, even though, there is death of 13 years old child, the Tribunal has awarded exorbitant amount of compensation. There is no income proof of deceased Mauli and it is difficult to believe that, 13 years old child was earning Rs.3,000/- p.m. by grazing cattle.

4. Learned counsel for respondent insurer submits that, as per the certified copy of the licence Exh.23 the appellant owner cum driver is holding valid and effective driving licence to drive the N.T. Vehicle and same was valid till 27.1.2013 only. In this case, the accident had taken place on 25.5.2013 the date on which the appellant owner cum driver was not holding valid and effective driving licence to drive the vehicle. The learned Member of the Tribunal has, therefore, rightly exonerated the insurer from liability to pay the compensation.

5. The learned counsel in the alternate submits that in the event, this court comes to the conclusion that insurer is also liable to pay the compensation alongwith the appellant owner, then the Tribunal has awarded

exorbitant amount of compensation and the same is liable to be reduced by considering the status of deceased as non earning member of the family.

6. Learned counsel for respondents claimant submits that, the Tribunal has awarded just and reasonable compensation by considering the earnings of deceased Mauli. Though deceased Mauli was 13 years old at the time of his death, he was helping family by grazing cattle and earning Rs.3,000/- p.m. No interference is required.

Learned counsel submits that Tribunal has also erroneously exonerated respondent insurer from the liability to pay the compensation alongwith the appellant owner.

7. I have carefully gone through the pleadings, evidence, judgment and award passed by the Tribunal. It appears that the Tribunal has exonerated the respondent Insurer only on the ground that the appellant owner cum driver was not holding valid and effective driving licence on the date of accident. On

careful perusal of the policy issued by the respondent insurer in respect of the vehicle involved in the accident, it appears that, it is a goods carrying public carrier package policy. The certified copy of registration particulars is also produced on record and the same is marked at Exh.22. It appears that vehicle is described as a commercial vehicle. The learned counsel appearing for the respondent insurer has also not disputed that for driving a commercial vehicle which is insured under the goods carrying public carrier package policy, the transport licence is required. On careful perusal of the certified copy of driving licence exh.23, it appears that, driving licence under the category of transport is valid up to 14.11.2013. In the instant case, the accident had taken place on 25.5.2013. Thus, on the date of accident, the appellant owner cum driver was holding valid and effective driving licence to drive transport vehicle. Even on careful perusal of the driving licence Exh.23, it appears that the validity of the non transport licence is also up to 19.5.2020.

8. In view of the above discussion, it appears that, the Tribunal has committed error in exonerating the respondent insurer from the liability to pay the compensation jointly and severally alongwith the appellant owner. Impugned judgment and award thus required modification to that extent only.

9. So far as quantum is concerned, claimant no.1 has deposed that deceased Mauli was earning Rs.3,000/- p.m. by grazing cattle of others. He was helping the family. There is nothing in the cross examination to disbelieve the evidence of the mother. The Tribunal has considered income of deceased Mauli and by applying the relevant multiplier awarded just and reasonable compensation. No interference is required.

10. So far as quantum of compensation is concerned. In view of the above discussion, I proceed to pass the following order.

O R D E R

I] First Appeal is hereby partly allowed with proportionate costs.

Ii] The judgment and award passed by the Member, Motor Accident Claims Tribunal, Ambajogai dated 30.5.2015 in MACP No.64/2013 is hereby quashed and set aside to the extent of dismissal of the claim petition as against Respondent no.2 insurance company.

Iii] The judgment and award passed by the Member, Motor Accident Claims Tribunal, Ambajogai dated 30.5.2015 is modified in the following manner.

> Petition is partly allowed with proportionate costs as against respondents no.1 and 2, who are jointly and severally liable to pay the compensation of Rs.3,48,000/- (Rs. Three lakh forty eight thousand only) inclusive of 'No Fault Liability' to the claimants alongwith interest @ 7% p.a. from the date of petition till realization of the entire amount.

Iv] Rest of the judgment and award stands confirmed.

v] Award be drawn up as per above modifications.

vi] Appeal is accordingly disposed of.

vii] The appellant owner cum driver has made statutory deposit before this Court at the time of filing of appeal. Same shall be refunded to the appellant.

viii] In view of disposal of first itself, pending civil application stands disposed of accordingly.

(V.K. JADHAV, J.)

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aaa/-