IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3809 OF 2016

ANITA SANTRAM DAMALE AND ORS
VERSUS
MAHESH SHIVAJI MISAL AND ANR
...
Advocate for Appellants : Mr. L.B. Palod and Mr. D.l. Palod
.....

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

PER COURT:-

1. Being aggrieved by the order dated 3.8.2016 passed below Exh.5 in M.A.C.P. No. 42 of 2015, by the learned Member, M.A.C.T. Newasa, the original claimants have preferred this appeal.

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

a) On 2.5.2015, at about 10.30 a.m. deceased Santram was proceeding on his motor cycle from Bhanashivra towards Mukindpur. On way, the motorcycle of respondent No.1, bearing no registration number, came from opposite side in high speed and gave dash to the motor cycle of deceased Santram. In consequence of which, deceased Santram had sustained injuries and died on the spot. The claimants-legal representatives of deceased Santram approached the Tribunal by filing M.A.C.P. No. 42 of 2015 for grant of compensation under various heads and also filed an application Exh.5 for grant of fixed compensation under no fault liability. The learned Member of the Tribunal, by order dated 3.8.2016 below Exh.5 directed respondent No.1-owner to pay the amount of Rs.50,000/- to the appellants-original claimants towards no fault liability under section 140 of Motor Vehicles Act and dismissed the said application Exh.5 as against respondent No.2-insurer. Hence, this appeal.

3. Learned counsel for the appellants-submits that deceased Santram was third party and a dash was given by another motor cycle, which was bearing no registration number. Learned Member of the Tribunal has placed reliance on the judgment in the case of ***Narinder Singh vs. New India Assurance Company Ltd. and others, reported in 2014 (4) T.A.C. 1 (S.C.)***. In the said case, the claimant was seeking compensation for damages in respect of the vehicle insured by the insurance company. Since the said claim was repudiated by the Insurance company, the complaint under the provisions of Consumer Protection Act came to be filed, claiming damages in respect of the vehicle which was not registered. The Supreme Court has therefore, observed that using the vehicle on public road without any registration is not only an offence but also a fundamental breach of the terms and conditions of the policy. The

Supreme Court therefore, upheld the dismissal of complaint by the State Commission as affirmed by the National Commission. Learned counsel submits that in the instant case, deceased Santram was not responsible for non registration of offending vehicle and as such, being third party, the insurer is liable to pay the compensation and then recover it from the respondent owner.

4. None appears for the respondents though notices of final disposal have been issued and served on them.

5. In the instant case, the original claimants have preferred this appeal against the no fault liability award passed by the Tribunal.

6. In the case of ***Narinder Singh vs. New India Assurance Company ltd and others (cited),*** though the Supreme court has observed about the effect of non registration of vehicle, in the facts of the said case, the Supreme court has considered fundamental breach of the terms and conditions of the policy of contract and accordingly upheld the dismissal of complaint by the State Commission. In the instant case, deceased Santram was third party and as such, in view of authoritative pronouncement of Supreme Court in the case of ***S. Iyyapan vs. M/s. United India Insurance Company Limited and another, reported in AIR 2013 SC 2262***, it

is statutory liability of the Insurance Company to satisfy the award in terms of the provisions of Sections 149 of the Motor Vehicles Act. The Supreme Court in the said case has observed that in certain circumstances specified in Section 149, the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

7. In view of above, the order passed below Exh.5 by the Member, M.A.C.T. Newasa in M.A.C.P. No. 42 of 2015, requires modification. Hence, I proceed to pass the following order:-

O R D E R

I. The first appeal is hereby partly allowed. No costs.

II. The order dated 3.8.2016 passed by the Member, Motor Accident Claimant Tribunal, Newasa below Exh.5 in M.A.C.P. No. 42 of 2015 is hereby modified in the following manner:-

"The application is hereby allowed. The respondent Nos. 1 and 2 jointly and severally do pay an amount of Rs.50,000/- (Rupees Fifty thousand only) to the petitioners towards 'no fault liability' under Section 140 of Motor Vehicles Act within one month from today, failing which the amount shall carry interest @ 7% p.a. till realization of the said amount. However, respondent No.2-insurer shall pay the aforesaid entire amount of Rs.50,000/- to claimants and recover the same from respondent No.1, for which no separate proceeding is required to be initiated."

III. Rest of the order stands confirmed.

IV. The appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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