

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 799 OF 2015

THE NEW INDIA ASSURANCE CO. LTD.
VERSUS
BHAGWAN BHAUSAHEB NAVLE AND ORS

...
Advocate for Appellant : Mr. M.M. Ambhore
Advocate for Respondent No.1 : Mr. R.D. Bhalerao
Advocate for Respondent No.2 : Mr. V.Y. Bhide
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CORAM : V. K. JADHAV, J.
DATED : 12th APRIL, 2017

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 29.1.2011, passed in M.A.C.P. No. 862 of 2002, by the learned Member, Motor Accident Claims Tribunal, Sangamner, the original respondent No.2 insurer has preferred this appeal.
3. Brief facts giving rise to the present appeal are as follows:-
 - a) On 14.1.1999, the claimant was driving Hero Honda Motorcycle bearing registration No. MH-17-D- 7984 from Samsherpur to Akole and owner of the said motorcycle i.e. respondent No.3 Dagdu was the pillion rider. On way, one another motorcycle of

Rajdoot company, bearing registration No. MH-17-D-4026 came from opposite direction in excessive speed and gave dash to the motorcycle being driven by the claimant. In consequence of which, the claimant had sustained injuries to his right foot etc. He was admitted in the hospital. The claimant had incurred huge medical expenses. The injuries sustained by the claimant also resulted into permanent disablement to the extent of 30%. The claimant thus approached the Tribunal by filing M.A.C.P. No. 862 of 2002 for grant of compensation under various heads on the ground that he has sustained injuries on account of driving of Rajdoot motorcycle in excessive speed and in rash and negligent manner and caused the accident. It has been contended in the claim petition that Rajdoot motorcycle was insured.

b) Respondent No.1 owner of the Rajdoot motorcycle had failed to file his written statement. Thus the claim petition ordered to be proceeded without his written statement.

c) The appellant/insurer has strongly resisted the application by filing written statement, in which it has been contended that the rider of Rajdoot motorcycle was at fault and after accident, crime also came to be registered against the rider of said Rajdoot motorcycle. The Hero Honda motorcycle bearing registration No. MH-17-D-7984

being driven by the claimant at the time of accident was insured with the appellant and as such the appellant insurer is not liable to pay any compensation.

d) The respondent No.3 owner of Hero Honda motorcycle has failed to appear despite service of notice and as such hearing of the claim petition ordered to be proceeded ex parte against him.

e) The claimant has adduced oral and documentary evidence to substantiate his claim. The appellant and other respondents have not adduced any evidence. The learned Member of the Tribunal has partly allowed the claim petition and thereby directed the appellant and respondent Nos. 2 and 3 jointly and severally to pay Rs.71,000/- inclusive of 'no fault liability amount' alongwith interest @ 7.5% p.a. from the date of petition till realization. Hence, this appeal.

4. Learned counsel for the appellant/insurer submits that the claimant has approached the Tribunal with specific pleading that the accident had taken place on account of rash and negligent driving on the part of rider of Rajdoot motorcycle and he was riding the Hero Honda motorcycle with due care and caution. Even the claimant has also deposed before the Tribunal in the said lines. Further, the police papers came to be placed before the court. After due investigation,

the concerned police have submitted charge sheet against driver of Rajdoot motorcycle. Thus, the respondent No.1/owner of the Rajdoot motorcycle is entirely liable to pay the compensation. The respondent No.1 has not contested the claim petition in any manner. The learned Member of the Tribunal has also recorded the findings in affirmative to issue No.1 and held that the accident was caused due to rash and negligent driving of rider of Rajdoot motorcycle. Learned counsel submits that learned Member of the Tribunal has incorrectly recorded the facts and without any basis, fastened the liability on the appellant and respondent No.3.

5. Learned counsel for the respondent No.1/owner of Rajdoot motorcycle submits that the claimant has filed the claim petition against respondent No.1/owner of Rajdoot motorcycle as well as the owner and insurer of Hero Honda motorcycle. It is not disputed that Hero Honda motorcycle was driven by the claimant and as such it was involved in the accident. Learned counsel submits that there was head on collision between two vehicles and therefore, the claimant has impleaded the owner and insurer of Hero Honda motor vehicle as party to that claim petition. Respondent No.3 owner of Hero Honda motorcycle has not contested the claim petition in any manner. Thus, considering the same and after going through the police papers, learned Member of the Tribunal has rightly fastened

the liability on original respondent No.3 and the appellant. No interference is required.

6. Learned counsel for the claimant submits that the injuries sustained by the claimant resulted into permanent disablement to the extent of 30% and all respondents are jointly and severally liable to pay the compensation. Learned Member of the Tribunal has rightly held that all respondents are jointly and severally liable to pay the compensation.

7. On careful perusal of pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the learned Member of the Tribunal has incorrectly recorded the facts in the impugned judgment. In para 2 of the judgment, learned Member of the Tribunal has incorrectly recorded that owner of the offending vehicle Rajdoot motorcycle is opponent No.3 and said vehicle is validly insured with the present appellant. In fact, the said offending vehicle Rajdoot motorcycle is without insurance and Hero Hondo motorcycle being driven by the claimant at the time of accident is insured with the appellant. In para 4 of the judgment, in continuation of incorrect observation in para 2 of the judgment, the learned Member of the Tribunal has further observed that the appellant insurer raised a defence that the owner of Rajdoot motorcycle had

committed breach of the conditions of insurance policy regarding licence etc.

8. Apart from this, it is the case of the claimant that the Rajdoot motorcycle came from opposite direction and gave dash to his motorcycle. The claimant has deposed that rider of Rajdoot motorcycle had driven it in excessive speed and also in rash and negligent manner. On the other hand, he was driving his motorcycle from correct left side of the road. It is a part of record that after due investigation, the concerned police has submitted charge sheet against the rider of Rajdoot motorcycle. Those papers are marked at Exh. 34/1-13. Respondent No.1/owner of the Rajdoot motorcycle has not contested the claim petition in any manner and as such, none of the party has raised defence that there was head on collision between the two vehicles and as such, the owner of both the vehicles and the appellant insurer are jointly and severally liable to pay compensation.

9. In view of above, it appears that the learned Tribunal has incorrectly recorded the facts in earlier part of the judgment and in continuation with the said observation, erroneously fastened the liability on the appellant and respondent No.3. In view of the findings recorded to issue No.1 in affirmative, respondent No.1 alone is liable

to pay compensation. So far as finding recorded to issue No.3 is concerned, the said issue is unwarranted and uncalled for and even though the Tribunal has recorded the finding in negative to the said issue No.3, the appellant insurer and respondent No.3 cannot be held liable to pay compensation in any manner.

10. In view of 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, M.A.C.T. Sangamner, dated 29.1.2011, in M.A.C.P. No. 862 of 2002 to the extent of holding the appellant and original respondent No.3 liable to pay compensation jointly and severally alongwith respondent No.1, is hereby quashed and set aside.
- III. The judgment and award passed by the Member, M.A.C.T. Sangamner dated 29.1.2011 in M.A.C.P. No. 862 of 2002 is thus modified in the following manner:-

“The opponent No.1 Bhanudas Ramchandra Vaidya, do pay Rs.71,000/- (Rupees seventy one thousand (inclusive of no fault liability amount of Rs.25,000/- which is not received by the claimant) alongwith interest @ 7.5% p.a. from the date of petition till realization of the amount. The claim petition is hereby dismissed against respondent Nos. 2 and 3.”

- IV. Rest of the judgment about quantum of compensation stands confirmed.
- V. Award be drawn up as per above modification.
- VI. Needless to say that if any amount is deposited by the appellant/insurer as per the judgment and award passed by the tribunal, the same shall be refunded to the appellant/insurer.
- VII. Appeal is accordingly disposed of.

(V. K. JADHAV, J.)