IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4006 OF 2016

BHIMRAO TRIMBAKRAO VAGHCHAURE AND ORS
VERSUS
RAM VITHAL SHISODE AND ORS
...
Advocate for Appellants : Shri Jadhav Kakasaheb B.
None for the Respondents.
...

CORAM: V.K. JADHAV, J.

DATE :- 03rd April, 2017

Per Court:

1 Being aggrieved by the judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad dated 30.07.2016 in MACP No.178/2015, the original Claimants have preferred this Appeal to the extent that the Tribunal has exonerated the Respondent No.3/ Insurer from the liability to pay the compensation.

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

(a) On 29.01.2015 at about 08:15 am, the deceased was coming from Bidkin to Dhupkheda by Aurangabad-Paithan Road on the motorcycle and at that time, one Tata Truck bearing No.MH-12-HD-0725 came from the opposite side in speed and gave dash to the motorcycle of the deceased. The claimants, who are legal representatives of the deceased, approached the Tribunal by filing MACP No.178/2015 for grant of compensation under the various heads.

(b) The Respondent No.3/ Insurer has resisted the claim petition by filing the Written Statement. The Respondent No.3 has raised a specific plea that the driver of the said truck was not holding the valid and effective driving licence at the time of accident and as such, there has been breach of the specified conditions of the policy and thus, the Respondent No.3 is not liable to pay any compensation.

(c) The Appellants/ claimants and the Respondent No.3/ Insurer adduced the oral and documentary evidence in support of their contentions.

(d) The learned Member of the Tribunal has directed the Respondent Nos.1 and 2/ Driver and Owner of the Truck, to pay the compensation of Rs.11,40,000/- including the NFL amount along with interest at the rate of 9% per annum from the date of filing of the claim petition till realization of the entire amount. However, the Tribunal exonerated the Respondent No.3/ Insurer from the liability to pay the compensation along with the Respondent Nos.1 and 2 jointly and severally. Hence, this appeal to this limited extent.

3 The learned counsel for the Appellants/ claimants submits

that the deceased was riding his motorcycle at the time of accident and the dash was given to his motorcycle by the said truck. The learned counsel submits that the deceased was the third party and even though the Respondent No.3/ Insurer succeeded in proving that the driver of the offending truck was not having valid and effective licence at the time of accident, in terms of the provisions of Sections 146 and 147 of the Motor Vehicle Act, it is incumbent upon the Insurer to satisfy the award passed against the insured in terms of the insurance policy. The learned counsel, in the alternative, submits that the Tribunal at least ought to have directed the Respondent No.3/ Insurer to pay the entire amount and then recover the same from the Respondent Nos.1 and 2.

4 The learned counsel for the Appellants, in order to substantiate his contentions, has placed reliance upon the judgment in the case of *S.Iyyapan vs. M/s United India Insurance Company Limited*, reported in **AIR 2013 SC 2262**.

5 Though the notice for final disposal came to be issued against the Respondents including the Insurer and served on them, none appears for them.

6 On perusal of the record and proceedings, it appears that the

Respondent No.3/ Insurer has examined the witness Sachin, who is working as the Vehicle Inspector in RTO Office, Parbhani. He has deposed on the basis of the official record and brought to the notice of the Tribunal that so far as the driving licence at Exhibit-62 is concerned, the same was valid till 22.08.2013 in respect of driving of LMV Transport Vehicles and thereafter, the said licence was not renewed. So, it is revealed from his evidence that the driving licence of the driver of the offending vehicle was valid upto 22.08.2013 and the accident occurred on 29.01.2015. Further more, at the time of accident, the driver of the offending vehicle was driving the heavy transport vehicle. Thus, there has been breach of the specified conditions of the insurance policy.

7 The Honourable Supreme Court, in the case of *S.Iyyapan vs. M/s United India Insurance Company Limited* (supra), has made the following observations in paragraph 17:-

> "*17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances 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. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the*

> *vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. 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.*"

8 In the instant case, it is statutory right of the third party to recover the amount of compensation so awarded from the Insurer and it is for the Insurer to proceed against the Insured in the event there has been any violation of the specified condition of the insurance policy. In the light of the facts of the present case and the ratio laid down in *S.Iyyapan (supra)*, the Respondent No.3/ Insurer is liable to pay the compensation first and then to proceed against the Respondents/ Insured for recovery of the amount.

9 Hence, I proceed to pass the following order:-

(a) The First Appeal is hereby partly allowed. However, no order as to costs.

(b) The judgment and award dated 30.07.2016 passed by the Member of the Motor Accident Claims Tribunal, Aurangabad in MACP

No.178/2015 is hereby modified in the following terms:-

"The Respondent Nos.1 and 2 shall, jointly and severally, pay the compensation amount of Rs.11,40,000/- (Rupees Eleven Lac Forty Thousand) including NFL amount to the Claimants along with interest at the rate of 9% per annum from the date of filing of the claim petition till realization of the entire amount. However, the Respondent No.3/ Insurer shall pay the said amount of Rs.11,40,000/- (Rupees Eleven Lac Forty Thousand) to the Claimants along with interest at the rate of 9% per annum from the date of filing of the claim petition till realization of the entire amount and the Respondent No.3/ Insurer is entitled to recover the said amount from the Respondent Nos.1 and 2 without filing any independent proceedings."

(c) The Award be drawn up accordingly.

(d) The First Appeal is, accordingly, disposed of.

(V.K. JADHAV, J.)

Kalyan Sangvikar,
PA.