IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

544 FIRST APPEAL NO. 57 OF 2016

CHANDRAKALA DATTU GUNJAL AND OTHERS
VERSUS
NITIN PRABHAKAR GORE AND OTHERS
...
Advocate for Appellants : Mr. Dixit Satyajeet S.
Advocate for Respondent No.1: Mr. R.K. Temkar
Advocate for Respondent No.3 : Mr. S.R. Bodade
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CORAM : V. K. JADHAV, J.
DATED : 18th APRIL, 2017

PER COURT:-

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

2. Being aggrieved by the judgment and award dated 28.10.2015 passed by the learned Member, M.A.C.T. Sangamner in M.A.C.P. No. 26 of 2007, the original claimants have preferred this appeal to the extent that the Tribunal has erroneously exonerated the insurer from the liability to pay the compensation alongwith the respondent owner and further to the extent of quantum of compensation.

3. Learned counsel for the appellants original claimants submits that on 22.8.2006, deceased Dattu was walking with his colleague workers. In front of Sai Sagar mobile shoppe near Mantri Bank,

Sangamner, one Maruti van bearing registration No. MH-17-T-5613 came from Nashik side in high and excessive speed and gave dash to deceased Dattu. Deceased Dattu was immediately taken to the hospital, where he succumbed to the injuries on 27.8.2006 while under treatment. Learned counsel submits that the respondent insurer has strongly resisted the claim petition mainly on the ground that the said vehicle Maruti van was registered as private car but the owner was using it as transport vehicle and as such there was breach of insurance policy. Learned counsel submits that deceased Dattu was third party and legal heirs of deceased Dattu has nothing to do with the fact whether the respondent owner of the said Maruti van had given intimation to the insurer about conversion of his private vehicle into commercial vehicle. The Tribunal ought to have fastened the liability on the respondent insurer jointly and severally alongwith owner or in the alternate, the Tribunal ought to have directed the respondent insurer to pay the compensation and recover the same from the respondent owner. However, the Tribunal has erroneously observed that there is fundamental breach in respect of the policy condition and accordingly exonerated the respondent insurer. Learned counsel submits that though the Tribunal has considered the salaried income of deceased Dattu, has not added 30% in the salaried income towards future prospects.

4. Learned counsel for the respondent insurer submits that the respondent owner has not given any intimation either orally or in writing to the respondent insurer about the conversion of his private Maruti van into commercial vehicle. The said vehicle Maruti van was insured with the respondent insurer as a private vehicle and not as commercial vehicle. In absence of intimation about conversion of the vehicle to the respondent insurer, the respondent insurer is not liable to pay any compensation. The learned Member of the Tribunal has rightly observed that there is fundamental breach of the insurance policy. As per the general regulations in respect of the insurance of the motor vehicle, most particularly, general regulation 18, prior intimation about conversion or change of vehicle is required to be given to the respondent insurer. Deceased Dattu was working as labourer and he was 47 years of age at the time of his accidental death. The Tribunal has, therefore, rightly observed that there appears no chance of promotion to him and, as such, held that there is no question of addition in income towards future prospects so far as the quantum of compensation is concerned. Learned counsel for the respondent insurer submits that the Tribunal has awarded just and reasonable compensation.

5. I have also heard learned counsel for the respondent owner.

6. On perusal of evidence and the judgment and award passed by the Tribunal, it appears that the Regional Transport Officer, Shrirampur by order dated 13.10.2005 allowed the conversion of Maruti van vehicle bearing registration No. MH-12-W-1707 to transport vehicle and accordingly the new registration number is assigned as MH-17-T-5613. The said document is placed on record and marked Exh.36.

7. In view of the provisions of Rule 94 of the Motor vehicles Rules 1989, upon application made in writing by the holder of any permit, the Transport authority may at any time, in its discretion vary the permit or any other condition thereof. Sub Rule (2) of Rule 94 prescribes that Transport authority may vary any condition of any permit in accordance with any particular or general direction issued by the State Transport Authority under sub section (4) of Section 68. The counsel appearing for the parties failed to collect the information as to whether any particular or general direction has been issued by the said Transport authority under sub-Section (4) of Section 68, prescribing the conditions thereby, in case the application is made in writing by the holder of the permit for conversion of his vehicle. Consequently, by order dated 16.03.2017, this Court requested the learned A.G.P. to collect the information from Regional Transport Officer at Aurangabad, whether any guidelines exist for grant of

permission to vary the permit by the Transport authority. The Regional Transport Officer, Aurangabad, by its communication dated 27.03.2017 has informed this Court through learned A.G.P. that the State Transport Authority, Maharashtra State, under sub-Section (4) of Section 68 r/w. sub Rule (2) of Rule 94 of Maharashtra Motor Vehicle Rules 1989, has not issued any guidelines to the Regional Transport Authority, Aurangabad with respect to vary any condition of permit and that no such guidelines and special general directions exist. He has further explained that in case if any point arises with respect to vary the permit and condition, State Transport Authority, Maharashtra State, Mumbai can issue guidelines to the Regional Transport authority.

8. In absence of any specific guidelines, it cannot be said that there is fundamental breach of the policy. So far as the general regulation No. 18 is concerned, the same pertains to change of vehicle and not in respect of variation in permit. Even though there are no specific guidelines/directions existing, it would be incumbent upon the owner of the vehicle to give intimation to the insurance company about variation in the permit. Here in this case, the Regional transport authority, Shrirampur by order dated 13.10.2005, has granted variation in permit and accordingly said vehicle Maruti van has been converted from non-transport vehicle into transport

vehicle and new registration mark was also assigned.

9. So far as deceased Dattu is concerned, he was third party and in absence of any guidelines/direction, as discussed above, it cannot be said that there is fundamental breach of the policy condition. However, in absence of any intimation given to the respondent insurer, it would be just and appropriate to direct the respondent insurer to pay entire amount of compensation to the claimant and recover the same from the respondent owner.

10. So far as the quantum of compensation is concerned, I do not find any substance in the submissions made on behalf of the claimants. The learned Member of the Tribunal has rightly held that deceased Dattu was working as labourer and as such, further chances of his promotion were nil. Learned counsel appearing for the respondent insurer has not made any submissions to the extent of quantum of compensation. Thus, the impugned judgment and award passed by the Tribunal requires modification as well as issuing directions to the respondent insurer to pay the compensation amount and then recover the same from the respondent owner. Hence, I proceed to pass the following order:-

O R D E R

I. The first appeal is hereby partly allowed with proportionate costs.

II. The judgment and award dated 28.10.2015 passed by the learned Member, M.A.C.T. Sangamner in M.A.C.P. No. 26 of 2007 is hereby modified in the following manner:-

"The claimants are entitled for an amount of Rs.8,83,500/ alongwith interest @ 8% p.a. inclusive of "no fault liability" amount of Rs.50,000/- towards compensation and the respondent No.1 owner is liable to pay the same. However, the respondent No.3 insurer is hereby directed to pay the entire amount of compensation of Rs.8,83,500/- alongwith interest @ 8% p.a. from the date of petition i.e. 08.02.2007 till realization of the entire amount and recover the same from the respondent owner for which no independent proceedings are required to be initiated."

III. The rest of the judgment and award stands confirmed.

IV. The award be drawn up as per the above modification.

V. The first appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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