Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1312 OF 2016
WITH
CIVIL APPLICATION NO. 204 OF 2017

The Oriental Insurance Co Ltd …Appellant
Versus
Sasafiqunnissa Abdul Majid Shaikh & Ors …Respondents

Ms Poonam Mittal, *for the Appellant.*
Mr Amot Gatne, *for Respondents Nos. 1 to 8.*

CORAM: G.S. PATEL, J
DATED: 4th July 2017

PC:-

1. The Appeal has been admitted and the R&P received. By consent, the First Appeal is taken up for hearing and final disposal.

2. One Abdul Majid Valimohammad Shaikh Mansoori died in a road accident on 19th April 2008 at about 11.00 a.m. on the Mumbai-Goa Highway, near Dakhane Phata, Mangaon, District Raigad. A claim came to be filed by eight persons. Applicant No. 1 was his widow, 40 years old at the time. Applicants Nos. 2 to 7 were their children ranging in age from 17 years to three years. Applicant No. 8 was the deceased's elder brother. The claim said that on 19th

April 2008, Abdul Mansoori was a passenger in a Mahindra Bolero No. MH-08-H-7645 along the Mumbai Goa Highway. The driver was speeding and, according to the Applicants, drove in a rash and negligent fashion. As the vehicle reached the boundary of Vighavali Village near Dakhane Phata, the driver lost control of the vehicle. It crossed over to wrong side of the road and went over the berm on the far side, causing the accident. Abdul Mansoori was injured. He was admitted to the Sub-District Hospital, Mangaon. He died of his injuries that very day, in the hospital. The police registered an offence as Crime No. 39 of 2008 under Sections 279, 304-A of the Indian Penal Code against the driver.

3. In the Claim Petition, the owner of the vehicle, one Ganesh Shantaram Peje, was the 1st Opponent. It was his employee who was driving the vehicle at the time of the accident. The 2nd Opponent was the insurer, the present Appellant.

4. Before the Tribunal, the Applicants said that Abdul Mansoori was about 40 years old at the time of the accident. He made his living selling flour sieves (*chalni*), and earned about Rs 6,000/- per month. He was an otherwise good health. His death deprived his widow and children of every source of maintenance and support. They thus claimed damages for loss of expectation of life and other loss caused to the estate. The total claim was for Rs 8 lakhs.

5. The Opponents filed written statements. All that the owner said was that he was unaware of how the accident occurred. The insurer opposed the claim. It disclaimed liability saying the vehicle was a goods vehicle and the Abdul Mansoori was travelling as a gratuitous passenger at that time. It claimed that while there was an insurance policy, it covered a goods carriage vehicle with a passenger capacity of one plus one, including the driver. The insurer said Abdul Mansoori was as "unauthorized passenger" and the policy did not cover a risk to a gratuitous unauthorized passenger such as he. This, according to the insurer, constituted a breach of the terms and conditions of the policy sufficient to absolve it of all liability. The insurer also contended that the driver did not hold a valid license and this was another breach.

6. The Motor Accident Claims Tribunal Mumbai framed four issues and answered them thus:

	ISSUES	FINDINGS
1.	Whether the Applicants, prove that the vehicular accident occurred on 19th April 2008 at about 11.00 hours, on Mumbai-Goa Highway in the boundaries of Vighavali Village, near Dakhane Phata, Mangaon, District Raigad involving the offending vehicle bearing No. MH-08-H-7645 AND Mr Abdul Majid Valimohammad Shaikh Mansoori succumbed to his injuries as alleged?	In the affirmative.
2.	Whether the insurer proves that there was a breach of terms and conditions of the insurance policy by the insured?	In negative.
3.	Whether the Applicants are entitled to get compensation as prayed?	Yes, as per final order.

4.	What order?	As per final order.

7. The Applicants relied on the evidence of Applicant No. 8. Another witness was also examined. The insurer examined one Umesh Somthankar from the Insurance Company. Applicant No. 8 in his deposition repeated what was said in the claim. The fact of the accident is not in dispute. This is mentioned in the FIR lodged by Opponent No. 1, the owner of the vehicle. The FIR itself says that the Bolera veered inexplicably across the right side of the road and went beyond it, causing the accident. The post-mortem report (Exhibit 25) also showed that the deceased suffered fatal injuries to his head and skull.

8. The certified copies of the police documents and the post-mortem record were in evidence file. The driver of the vehicle was never examined by any of the parties.

9. The principal defence raised by the insurer before the Tribunal, and repeated before me today, was that Abdul Mansoori was a gratuitous passenger and that this voided the policy at least *vis-à-vis* he; his family could maintain no claim. To substantiate this, the insurer examined its own Administrative Officer one Umesh Somthankar. His testimony is at Exhibit 31 of the record. The cross-examination is at pages 37 and 38. In this the insurer's witness accepted that the policy was a package/comprehensive policy. He denied that Abdul Mansoori was travelling with his goods; he said these were his personal belongings. Admittedly he had no personal knowledge of this, and this was his conclusion based on a statement in the FIR that Abdul Mansoori had two bundles of goods.

10. This does not carry the insurer the necessary distance in support of its defence. The policy in question is on record at Exhibit 32. It does say that the sitting capacity is one plus one including the driver but it is nobody's case that there were more than two passengers aboard the Bolero at the time of the accident. The case of the insurer is that this passenger was "unauthorized". For this we must turn to the FIR which is at Exhibit 24 and this indicates that the driver's version is that at about 8.30 pm that evening he stopped at Indapur on the Mumbai-Goa route. At that time, he was approached by Abdul Mansoori, who asked him for passage on his vehicle. Mansoori had at that time two bundles of his goods with him. These were loaded on to the vehicle, the driver having agreed to give Mansoori passage.

11. From this it is difficult to see how it can possibly be held that the insurance policy is breached in any of its terms and conditions. There were no more than two passengers including the driver on the vehicle. This was permissible. The goods were in fact the property of one of those passengers — the passenger was travelling with his goods — and this is the only case and material that is before the Court.

12. The exclusion of liability towards loss caused to gratuitous passengers is in respect of statutory policies only. The statement that the policy was a comprehensive policy is an admission at least to the necessary extent and it will, therefore, cover the accident in question.[1]

13. The question of rashness and negligence was, on the material before the Court, beyond doubt. All the police reports pointed in that direction, as did the owner's FIR itself. This is not even seriously challenged. The only challenge is to the question of liability, and that, as we have seen, is a matter on which the insurer was unable to establish its case.

14. The second defence that the driver had no valid license is one that only needs to be stated to be rejected. This was for the insurer to establish. It did nothing at all toward that objective.

15. This leaves the question of income. The post-mortem report shows his age at about 35. Given the demographic, that may not be entirely material and the Trial Court took his age at 40 which is the age given in the Claim Application anyway. The income from the flour sieves business was said to be Rs. 6,000/- and these were his monthly earnings as a skilled labourer. The Tribunal took the income at Rs. 5,000/- per month. For a family of eight, I do not think that is excessive; if he was to maintain a family of eight, he would have needed to earn at least this much.

16. Ms Mittal for the insurer submits that a mere flour sieve vendor or maker has no future prospects. I do not know what to make of this submission. The same thing could just as blithely be be

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1 *United India Insurance Co Shimla v Tilak Singh & Ors*, (2006) 4 SCC 404; *United India Insurance Co Ltd v M Laxmi*, (2009) 17 SCC 301.

said of many of us in court today, and it would be possibly untrue in either event. We have no shortage of instances of persons from the most modest beginnings attaining great heights. It is a submission best left alone. In my view, the Tribunal correctly applied the ratio in *Rajesh v Rajbeer Singh*[2] and took 50% of the actual income as an addition towards future prospects and computed the annual income at Rs. 90,000/-. It made a permissible deduction of 1/5th towards personal expenses and applied a multiplier of 15. This yielded a compensation towards loss and dependency of Rs 10,80,000/-. A further Rs 1 lakh was granted towards loss of consortium, another Rs 1 lakh to Applicant No. 8, the brother, and an amount of Rs. 25,000/- towards loss of estate. A further amount of Rs. 25,000/- was granted towards funeral expenses. For Applicants Nos. 2 to 7 and Applicant No. 8 an amount of Rs. 1 lakh was granted towards loss of love and affection. Every one of the permissible heads was thus covered and an aggregate of Rs. 13,30,000/- was awarded.

17. I can find no reason to interfere with the impugned order. In my view, it correctly considers the evidence and applies the law. The amount is neither excessive nor too trivial.

18. The Appellant has deposited the entire amount of Rs. 47,00,101/-, which includes the principal amount plus interest with the MACT Mumbai. I am told the amount has been invested. The statutory amount of Rs. 25,000/- has also been transferred to that Court.

2 (2013) 9 SCC 54.

19. The Applicants/Respondents will be at liberty to withdraw the entire amount deposited with accrued interest as also the entire amount of Rs. 25,000/- with accrued interest. The MACT will permit the withdrawal on production of an authenticated copy of this order.

20. The Appeal is dismissed with costs quantified at Rs. 25,000/.

21. The Appeal is disposed of in these terms. The R&P to be returned to the MACT Mumbai.

22. The Civil Application does not survive and is disposed of as infructuous.

(G. S. PATEL, J.)