Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 319 OF 2015
WITH
CIVIL APPLICATION NO. 1989 OF 2014
AND
CIVIL APPLICATION NO. 648 OF 2015

United India Insurance Co Ltd ...Appellant

Versus

Subhash Meghnath Gupta & Anr ...Respondents

Mr R Mehta, *i/b KMC Legal Venture, for the Appellant.*
Mr RS Chahal, *for Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 12th June 2017

PC:-

1. By consent, the Appeal is taken up for hearing and final disposal forthwith. The R&P is dispensed with. Parties are agreed that the present compilation is sufficient.

2. The Appeal is directed against an order dated 20th August 2013 of the Motor Accidents Claim Tribunal, Thane. The claim was under Section 166 of the Motor Vehicles Act 1988. The claim was that on 22nd February 2009 at about 6.00 am, the Applicant

Subhash Gupta was travelling from Vashi Vegetable Market in a tempo No. MH-04-BG-7802. The tempo overturned because it was being driven at a very high speed. Subhash Gupta was injured. He was an indoor patient at Rohit Nursing Home, Dahisar from 24th February 2009 to 27th February 2009. His claim was that the driver of the vehicle, Respondent No. 1 to the plaint, Umashankar Satyanarayan Gupta, was negligent. The vehicle was insured with the Appellant, and owned by Umashankar Gupta. The claim was such that Subhash Gupta was earning Rs 10,000/- per month. He claimed compensation of Rs. 1 lakh.

3. The vehicle owner did not contest the proceedings; the insurer did. It claimed that there was a breach of the insurance policy since a goods vehicle was being used to transport passengers. This ground is noted in paragraph 22 of the impugned order. The insurer company led the evidence of one Mr Rakesh Rathod in support of this contention.

4. The impugned Award, however, granted a claim in the amount of Rs. 43,110/- against Respondents Nos. 1 and 2 jointly and severally.

5. There is no contest to the insurance company's claim and indeed there cannot be, that there was a breach of the policy conditions. The only party who can contest this, the owner, chose to stay away. The Claimant could hardly contest this, being himself a passenger travelling unauthorizedly in a goods vehicle.

6. In my view, the Tribunal could not and should not have made an award jointly and severally against both Respondents. It should, instead, have issued rendered a finding that the liability was of the owner, and at most it might have directed the insurer to pay and then recover the amount from the insured owner including in execution proceedings before the MACT. This is all that is required to be done. There is no real dispute as to quantum.

7. The Appeal is, therefore, partly allowed. The insurer has already deposited the amount awarded. Hence, the order is modified to permit the Insurance Company/Appellant to recover the amount awarded from the insured owner. The original Applicant being Respondent No. 1 to this Appeal is at liberty to withdraw the amount deposited with all accrued interest.

8. The amount of Rs. 25,000/- deposited in this Court is to be transferred to the MACT, Thane and may also be allowed to be withdrawn by the 1st Respondent.

9. In view of this, the accompanying Civil Applications are infructuous, do not survive and are disposed of accordingly.

(G. S. PATEL, J.)