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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL ST NO. 14530 OF 2016
WITH
CIVIL APPLICATION NO. 3095 OF 2016

Reliance General Insurance Co Ltd …Appellant
Versus
K Sundari Amma Nair & Ors …Respondents

AND
CIVIL APPLICATION NO. 1105 OF 2017

K Sundari Amma Nair ...Applicant
Versus
Reliance General Insurance Co Ltd ...Respondent

Ms Poonam Mital, *for the Appellant.*
Mr Abhijit P Kulkarni, *for Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 27th June 2017

PC:-

Civil Application No. 3095 of 2016:

1. The delay of 62 days in filing the First Appeal is sufficiently explained. Delay condoned. The Civil Application is disposed of in these terms with no order as to costs.

First Appeal St No. 14530 of 2016 & CAF 1105 of 2017:

2. **Admit**. By consent taken up for hearing and final disposal forthwith on the basis of the record that is in the compilation accompanying the First Appeal.

3. On 20th March 2008 at about 6.30 am, when the Applicant and her husband were out for a early morning walk near their home at Shridhar Nagar, 12 Pragati Apartment, Chinchwad, Pune 411 033. When they reached Chaphekar Chowk, Link Road, Near Durga Provision Stores, a two wheeler Bajaj Pulsar motorcycle bearing No. MH-12-EJ-9329 came from behind and knocked them down. Both the Applicant and her husband were injured. The Claimant suffered injuries on her legs, thighs, face and other parts of the body. She fell unconscious. She was admitted to the Intensive Care Unit of the Aditya Birla Hospital, Thergaon, Pune.

4. Before the Motor Accident Claims Tribunal, Pune the 1st Opponent was the rider of the motorcycle and the 2nd Opponent was the insurer, which is now in Appeal.

5. The claim was that the Claimant suffered a permanent disability of about 20%. She could not work as efficiently and effectively as she could do earlier. The Claimant produced various documents in support of the claim including vehicle information, ration card, tax invoice and so on. A disability certificate was also produced as were the original medical bills.

6. The rider of the motorcycle did not appear. The insurer contested. It accepted that the motorcycle was insured with it. It then claimed that the driver of the motorcycle did not hold a valid driving license but only a learner's license.

7. It appears from the record that the Claimant examined herself, one Dr Anand Subodh Jadhav and two more witnesses. In her own testimony, the claimant confirmed what she had said in the claim and provided further details of the injuries caused to her. The panchanama shows that the Applicant and her husband were walking on the kaccha road and the offending vehicle hit them on that portion of the road; the two-wheeler had no reason to be on the kaccha road to the side. This persuaded the Trial Court to hold, and in my view quite correctly, that this was evidence of negligence and rash driving on the part of the rider of the motorcycle.

8. The documents in the accompanying parallel criminal case were also brought before the Court. This ultimately was tried as SCC No. 10513 of 2008 and the rider was held guilty under Sections 279 and 338 of the Indian Penal Code but was released under the Probation of Offenders Act.

9. The insurer led evidence of a witness apparently to prove that the driving license was not valid. This witness was not a police officer or from the RTO but was an employee of the Appellant itself.

10. Having regard to these factors, the learned Judge awarded Rs. 60,000/- towards permanent disability, Rs. 50,000/- towards pain and sufferings, Rs. 3,91,108/- against medical expenses, this being awarded on actuals, there being sufficient supporting evidence, and Rs 10,000/- for special diet.

11. The Appellant's witness Ravindra Changdev Jadhav in cross-examination accepted that the policy was valid at the time of the accident. He was not able to produce any documentary evidence about the validity or otherwise of the license. He only said that the insurer had enquired with the driver about the license. That is surely not enough. The insurer did not even produced copy of the vehicle examination report. Perhaps that might have indicated whether the two-wheeler had a learner's L-plate affixed on it.

12. This testimony is, as far as I can tell, utterly worthless. It is no testimony at all and hardly sufficient evidence to support the affirmative case placed by the Appellant that the license was invalid. Having asserted this, it was squarely for the Appellant to prove the fact. It could well have summoned the license-issuing authority or any other agency which could have deposed to the correctness or otherwise of this statement.

13. This is indeed the only ground of substance taken in the Appeal.

14. There is no reason to interfere with the order.

15. The First Appeal is dismissed with costs.

16. The Claimant will be at liberty to withdraw the entire amount awarded with accrued interest. The Claimant will also be at liberty to withdraw the amount of Rs. 25,000/- deposited with the Tribunal with the interest, if any, accrued thereon.

17. Civil Application No. 1105 of 2017 does not survive and is disposed of accordingly.

(G. S. PATEL, J)