IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1530 OF 1996
WITH
CIVIL APPLICATION NO.6712 OF 1996

Shri.Ashok Pandurang Patil ..Appellant/Applicant
V/s.
Smt.Prabhabai E. Kamble & Ors. ..Respondents

WITH
FIRST APPEAL NO. 394 OF 1997

Smt.Prabhabai E. Kamble & Ors. ..Appellant
V/s.
Shri.Ashok Pandurang Patil ..Respondent

Mr.Rajesh S. Datar for the Appellant in FA No.1530 of 1996 and for Respondent No.1. FA No.394 of 1997.

Mrs.Shalini Shankar for Respondent No.8 in FA No.1530 of 1996 and for Respondent No.3 in FA No.394 of 1997.

CORAM : M. S. SONAK, J.

DATE : 03 APRIL 2017

P.C.

1. Heard Mr.Datar for the appellant in First Appeal No.1530 of 1996 and Ms.Shankar for the respondent No.8-National Insurance Company Limited. The remaining respondents, who were the claimants before the learned MACT, though served, are neither present nor represented.

2. In First Appeal No.394 of 1997, which is instituted by the original claimants before the MACT, neither the claimants nor their advocates are present.

3. Mr.Datar appears for respondent No.1 and Mrs.Shankar appears for respondent No.4-National Insurance Company Limited.

4. The First Appeal No.1530 of 1996 is instituted by Mr.Ashok Patil, driver of Scooter No.MVA-3226. It is his scooter, which was involved in the accident in which, Eknath Kamble, who was riding pillion, expired. The appellant is mainly aggrieved with the impugned award to the extent, it exonerates the National Insurance Company from the payment of liability *inter-alia*, on the ground that the insurance policy was not a comprehensive insurance policy covering the liability in the case of death of a pillion rider.

5. The First Appeal No.394 of 1997, instituted by the claimants, challenges not just the exoneration of the Insurance Company, but also, the quantum of compensation awarded. From the grounds taken in the memo of appeal, it is the case of the claimants that the compensation awarded is quite meager and therefore, cannot be regarded as “Just Compensation”.

6. Mr.Datar, learned counsel for the appellant in First Appeal No.1530 of 1996 submits that the Insurance Policy was produced on record and marked as Exh.63. He submits that there is no dispute whatsoever that the insurance policy was in force on the date of the accident. He submits that the insurance policy itself states that comprehensive premium was paid. He submits that Mr.Sunilkumar, the Officer of the Insurance Company who deposed in the matter, has admitted that on the cover of the Insurance Policy, it is written in bold letters "Comprehensive Policy (India)". He submits that the proposal form, pursuant to which the Policy was received, was suppressed by the Insurance Company. He points out that the tariff was produced on record and interms of the same a sum of Rs.40/- was required to be paid in order to cover third party risk. He submits that in the present case premium of Rs.48/- has been paid. He submits that the amount of Rs.8/- was additional premium in order to cover liability in respect of the pillion rider. He submits that such relevant evidence was ignored by the learned MACT and for this reason the impugned award is liable to the interfered with to the extent it exonerates the Insurance Company.

7. Ms.Shanker, learned counsel for the insurance company also relies upon the Insurance Policy at Exh.63. She submits that

the is absolutely nothing stated in the Insurance Policy which is suggestive of payment of any additional premium in order to cover liability towards the pillion rider. She submits that on the basis of certain printed statement or on the basis of printed form, it cannot be said that this was a comprehensive Insurance Policy covering liability towards the pillion rider. She submits that the owner of the scooter, has neither contested the matter nor, was he examined in the matter. She submits that the material on record clearly establishes that this was not the case of the comprehensive policy and the MACT, has not erred in holding so.

8. The rival contentions now fall for my determination.

9. There is no dispute that the Insurance Policy was in force on the date of the accident, which in the present case, is 20-05-1987. In the column, which relates to comprehensive premium (A+B), it is recorded that net premium of Rs.48/- paid by the owner of the scooter in question. From this, at the most, it can be said that there is no clarity as to whether this was a comprehensive policy or not. However, considering circumstance that the amount of Rs.48/- was paid as against the column "Comprehensive Premium (A + B)" the onus was certainly upon the insurance company, in the facts and

circumstances of the present case, to establish that this was not a comprehensive policy.

10. Mr.Sunilkumar, the officer of the insurance company, came to be examined in the matter. Amongst several other statements, this is what he had said in relation to the Insurance Policy being comprehensive or not.

> *"It is true that as the policy was comprehensive, then alone, the risk to the pillion rider covers under the said policy.* ***Now I am shown Ex.63, the policy (certified copy). On the cover thereof, there is written in bold letters "Comprehensive Policy (India)", of motor cycles. I cannot offer any plausible explanation as to why the form in words "Comprehensive policy' has been used in the present case, through the premium was not paid to cover the pillion rider****. It is not true to say that the amount of Rs.48/- towards the premium mentioned in the policy, (Schedule of premium), is Rs.40/- for third party risk and Rs.8/- for covering the pillion rider and therefore, it has been rightly named as "Comprehensive policy".*
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> *(emphasis supplied)*

11. From the aforesaid, it is clear that even on the cover of the Insurance Policy, there is an endorsement in bold letters "Comprehensive Policy (India)". Mr.Sunilkumar, candidly stated

that he is not in a position to offer a plausible explanation as to why such endorsement appears on the cover of the Insurance Policy although, according to him, no premium was paid in order to cover liability towards the pillion rider. Since, the onus in this case was upon the Insurance company, the failure on the part of the insurance company, to offer in plausible explanation must, benefit the policy holder or for that matter the appellant herein, who urges that this was infact, a comprehensive policy.

12. Further, if the deposition of Mr.Sunilkumar is perused it does appear that the premium prescribed for covering the liability, *inter-alia* towards third party would come to Rs.40/- as per the then existing tariff. In this case, from the policy document, it is apparent, that premium of Rs.48/- was paid. In such circumstances, it was for the Insurance Company, to explain why, this additional amount of Rs.8/- could not be held as the additional premium paid by the policy holder in order to cover the liability towards the pillion rider. Such explanation, was necessary, particularly since, the cover of the Insurance Policy, in bold letters, contained an endorsement that this was a comprehensive Insurance Policy. Further, in the column relating to the schedule of premium, amount of Rs.48/- was said to be paid as against comprehensive premium (A+B).

13. In this case, the Insurance Company, failed to produce on record the proposal form submitted by the policy holder. Several questions were posed to Mr.Sunilkumar with regard to the proposal form. Ultimately, Mr.Sunilkumar stated that he was not in position to produce the proposal form. In such a situation an adverse inference, ought to have been drawn by the MACT, in that, if the proposal form was to be produced the position would perhaps be clear that, this was indeed a comprehensive insurance policy which would cover the liability in respect of the pillion rider.

14. Ms.Shanker, in the alternate, submitted that an order in the nature of "pay and recovery" is liable to be made in the present case. She submits that even if the Insurance Company is made to satisfy the awarded liability in the first instance, the Insurance Company, should have the liberty to recover this amount from the owner of the scooter, particularly because, the owner in the present case did not even contest the proceeding.

15. This is not a fit case to make any order in the nature of pay and recover. This is because, the material on record, does establish that the insurance policy was comprehensive and did cover the liability in respect of a pillion rider. This is not a case of breach

of any non-fundamental term of the policy on the part of the policy holder. Accordingly, even this contention of Ms.Shanker cannot be accepted, in the facts and circumstances of the present case.

16. Mr.Datar, learned counsel for the appellant-driver, is right in his submission that all such material evidence has not been taken into consideration by the learned MACT. In any case, all such material evidence has not been taken into consideration in a proper perspective by the learned MACT. On this ground, the impugned award is liable to be interfered with to the extent, it exonerates insurance company of any liability for payment of compensation. Accordingly, the impugned award is modified and it is held that the Insurance Company i.e. the National Insurance Company Limited is also jointly and severally liable along with original opponent Nos.1 and 2 for payment of compensation to the claimants.

17. Insofar as First Appeal No.394 of 1997 is concerned, there is really no case made out to interfere with the determination of salary and consequently, the dependency factor as determined by the learned MACT. On this count, the compensation comes to Rs.92,400/-. This is on the basis that deceased Eknath was a forester in the Forest Department in the Government of Maharashtra

and was aged about 50 years at the time of his demise. However, the MACT, has not awarded just compensation under the heads of loss of consortium and funeral expenses. The compensation awarded is indeed meagre. Further, there is no award made towards loss of love and affection at all.

18. Applying the law laid down by the Hon'ble Supreme Court in the case of ***Rajesh V/s. Rajbir Singh & Ors. (2013 9 SCC 54) and Reshma Kumari & Ors. V/s. Madan Mohan & Anr. (2013-ACJ-1253),*** an amount of Rs.1 lakh should have been awarded towards loss of consortium to Eknath's widow and further, an amount of Rs.1 lakh each should have been awarded towards loss of love and affection to the children of deceased Eknath. This means that an addition of Rs.6 lakhs is due to the dependency amount of Rs.92,400/-. Further, an amount of Rs.25,000/- was required to be awarded towards funeral expenses. This means that the total compensation would come to Rs.7,17,400/-.

19. The First Appeal No.394 of 1997 is accordingly allowed and the amount of compensation is enhanced to Rs.7,17,400/-. This compensation shall be paid jointly and severally by opponent Nos.1 and 2 before the MACT together with the National Insurance

Company Limited, which is now also held as jointly and severally liable for the payment of the compensation. The interest amount of 12% appears to be on higher side and therefore, the same is scaled down to 9%. Interest will have to be paid on the date of the application which is 13-11-1997. The Insurance Company shall be entitled to credit for the compensation amount already paid by them in satisfaction of the impugned award.

20. The two appeals are therefore allowed in the aforesaid extent. There shall be no order as to costs.

21. All concerned to act on the basis of the authenticated copy of this order.

(M. S. SONAK, J.)