Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (St.) No. 22720 OF 2012
WITH
CIVIL APPLICATION NO. 3104 OF 2012

The New India Assurance Co. Ltd. ... Appellant
Vs.
Smt. Gayatridevi Kalpanath Mishra & Ors. ... Respondents

Ms. Poonam Mittal, Advocate for the appellant/applicant.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **4th October, 2017.**

P.C.:

Upon mentioning, taken on production board.

2. This Appeal is to be decided summarily before issuance of notice in view of the order dated 8th October, 2014 passed by the Single Judge of this Court in First Appeal No. 1697 of 2013, as this is a connected matter arising out of the same accident. The insurance company has taken the same defence which is rejected by this Court and therefore, by taking the similar view, the Appeal is disposed of as under.

3. This Appeal is directed against the judgment and award dated 13th September, 2011 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai in M.A.C.P. No. 1441 of 2001 thereby granting compensation of Rs.4,18,550/- including NFL with interest @8.5% p.a. from the date of the Application. Two vehicles, i.e. motor

tempo bearing No. MH-04-AG-2741 and motor trailer bearing No. MH-04-F-3071 are involved in the accident. However, both the vehicles are insured with the same insurance company, i.e., New India Assurance Company Ltd. The learned Member of the Tribunal held that it is a case of contributory negligence and directed the opposite party and the insurer to jointly and severally the compensation of Rs.4,18,350/-.

4. The claim application is filed by the applicant/widow and minor son of deceased Kalpanath Mishra, who was 35 years old and was driving motor tempo bearing No. MH-04-AG-2741 for transport of the vegetables from Vashi market to Borivli. On 27th March, 2001 at about 2.15 hours when the deceased was proceeding on a highway, one motor trailer bearing No. MH-04-F-3071 was parked in the middle of the road in a negligent manner without parking lights and tail lamps. Due to invisibility, Kalpanath Mishra/tempo driver could not see the offending motor trailer and dashed the motor trailer from the rear side. Due to the impact, Kalpanath Mishra sustained serious injuries. He was taken to Shatabdi hospital where he was declared dead. Therefore, the applicants filed claim application for compensation. The applicant/widow claimed that her husband was earning Rs.6,000/- to Rs7,000/- per month. The insurance company

appeared, filed the written statement and defended the claim that the policy of the vehicle was cancelled for non-payment of premium at the relevant time, hence the insurance company is not liable to pay compensation. The applicant/widow examined herself and also placed documents on record. The learned Member of the Tribunal, after considering the oral as well as documentary evidence, held opposite party and insurer jointly and severally liable to pay compensation of Rs.4,18,350/- along with interest @8.5% p.a. Being aggrieved by the said judgment and award, the insurance company has filed this Appeal.

5. The learned counsel for the appellant/insurance company has submitted that the learned Member of the Tribunal ought to have appreciated that there was default in payment of premium of the policy of the insurance and the cheque given by the owner of the vehicle was dishonoured and, therefore, the insurer is not liable to pay any compensation in respect of such policy to the applicant. It was prayed by the learned counsel for the insurance company that this issue was not raised before the Tribunal and therefore, the matter to be remanded to the Tribunal and the insurance company be given opportunity to tender evidence.

6. Heard the submission. Perused the judgment and evidence

placed before the Tribunal. I am of the view that on the point of quantum, the learned Tribunal has properly assessed the evidence in respect of medical expenses and also loss of income. The insurance company has not tendered any evidence in respect of dishonouring of cheque. The learned Tribunal has rightly relied on the principles laid down by the Supreme Court in the case of **National Insurance Co. Ltd. vs. Kaushalya Devi & Ors.** reported in **(2008) 8 SCC 246** and in the case of **National Insurance Co. Ltd. vs. Sarojamma & Ors.,** reported in **2009 ACJ 119**. The cheque in one of the policy of the vehicle was dishonoured, however, other vehicle was properly insured. Moreover, no evidence was tendered in respect of dishonouring of cheque and, therefore, no ground can be allowed to raise at this stage across the bar. Thus, there is no merit in the Appeal. The compensation awarded by the Tribunal is just and adequate. Hence, the First Appeal is dismissed.

7. In view of dismissal of First Appeal, Civil Application do not survive, hence the same is also disposed of accordingly.

8. Office is directed to transfer a sum of Rs.25,000/- deposited by the appellant in compliance of Section 173 of the Motor Vehicle Act to the Motor Accident Claims Tribunal, Mumbai.

(MRIDULA BHATKAR, J.)