IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

FIRST APPEAL NO. 337 OF 2017
WITH
CIVIL APPLICATION (F) NO.1907 OF 2017

The Oriental Insurance Co. Ltd.,
Through: Divisional Manager,
Rayat Haveli, Old Cotton Market,
Akola Tahsil and District Akola. ..APPELLANT

VERSUS

1. Bali w/o Ukanda Rathod,
Aged about 33 years, Occ: Nil,
resident of Kherda (Khd)
Tahsil Barsitakli,
District Akola.

2. Mohd. Afzal Mohd. Ashraf,
Aged about 30 years,
Occ: Driver, R/o Sufi Chowk,
Wadegaon Tahsil Balapur,
District Akola.

3. Digambar Jagatram Telgote,
Adult, Occ: Owner, R/o. Katyar,
Tahsil and Dist. Akola. ..RESPONDENTS

Mr M.N. Ahmed, Advocate for appellant;

CORAM : N.W. SAMBRE, J.

DATE : 13th APRIL, 2017

ORAL ORDER :

This appeal is under the provisions of Section 173 of the Motor Vehicles Act by the

Insurance Company against the compensation awarded in favour of respondent No.1 by learned Motor Accident Claims Tribunal, Akola in Motor Accident Claim Petition No.95 of 2012 vide judgment dated 15th December, 2016.

2. Respondent No.1 while working as daily wager on 7th June, 2010 was hit by taxi bearing registration No. MH-30-E-9615 at Akola, resulting into right hand and right leg getting fracture.

3. The respondent-claimant was hospitalized for a period from 7th June, 2010 to 23th June, 2010. Crime No. 175 of 2010 came to be registered against the driver of offending vehicle for rash and negligent driving.

4. Learned tribunal, pursuant to the issues framed at Exhibit-20, appreciated the documentary evidence viz., Form-AA at Exhibit-25, F.I.R. at Exhibit-26, spot panchnama at Exhibit-27, charge sheet at Exhibit-28, injury certificate at Exhibit-29, insurance policy at Exhibit-31,

discharge card at Exhibit-32, disability certificate at Exhibit-37, medical bills at Exhibits-39/1 to 39/6 and oral evidence of the claimant and PW-2 Dr. Vishal Bhagwat so as to prove disability certificate at Exhibit-37 and discharge summary at Exhibit-38 and medical bills.

5. Learned Counsel for respondent Nos. 1 and 2 driver and owner of the vehicle remained absent, however so did the appellant-insurance company.

5. Having regard to the material brought on record, the compensation of Rs.1,65,000/- was awarded, which is questioned by the appellant on the ground that there was substantial breach of the policy terms, as offending vehicle was used without permit at the time of accident, as same was expired on 8th December, 2009 against the accident dated 7th June, 2010.

6. With the assistance, I have perused the award delivered by the tribunal. It is required to be noted that in the cross examination, suggestion

was given by the appellant that the accident took place due to sole negligence of taxi driver, which was admitted by the claimant. The claimant has also examined PW-2 Dr. Vishal Bhagwat, who has narrated about appearance of the claimant before Medical Board and injury sustained does not permit him to carry heavy weight. The permanent disability is assessed and accordingly medical certificate was issued and medical bills at Exhibits-39/1 to 39/6 were claimed to be against prescriptions issued by him.

7. Nothing adverse is brought on record by the insurance company in the cross examination of the said witness or independently. The other material viz., first information report at Exhibit-27 and charge sheet at Exhibit-28 were appreciated by the tribunal and it was noticed that the accident took place due to negligent driving of respondent No.1. The injury certificate at Exhibit-27 is proved by the evidence of PW-2 Dr. Bhagwat.

8. The permit of offending vehicle was

expired on 8th December, 2009 was not proved by producing copy of permit. The insurance policy at Exhibit-31 speaks of covering accident only in case of valid permit, however, the material qua the breach of policy condition is not brought on record by the insurance company, as the burden for the same is on insurance company.

9. It is then to be noted that the tribunal proceeded to consider the expenditure incurred by the claimant upon her treatment, loss of income and 6% permanent disability and as such, awarded compensation of Rs.69,120/- towards loss of income due to 6% permanent disability, Rs.36,000/- for loss of income during medical treatment, Rs. 25,000/- for medical expenses etc., and Rs.18,000/- for attendance charges.

10. In the backdrop of above, the contention that there was breach of policy conditions and award of compensation was not justified cannot be accepted. The appeal, as such, fails, stands dismissed.

11. In view of dismissal of the first appeal, civil application for stay stands disposed of.

(N.W. SAMBRE, J.)

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