IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

FIRST APPEAL NO. 736 OF 2016
WITH
CIVIL APPLICATION NO. 2501 OF 2016

Bharati Axa General Insurance Co. Ltd.,having its office at 222, B-Block, Vishnu Vaibhav Complex, Plam Road, Civil Lines, Nagpur through its Senior Manager (Legal) Shri Idris s/o Zahid Khanwala. ..APPELLANT

VERSUS

1. Shri. Suresh Raghoji Chandurkar, Age 49 years, Occ: Labourer,

2. Master Akash s/o Suresh Chandurkar, age 16 years, Occ: Student, through natural guardian i.e. Respondent No.1 Respondent Nos. 1 and 2 are resident of Asegaon, Tah. Risod, Dist. Washim

3. Shri Ravindra Kumar Kaswan, Age adult, Occ: Businessman, R/o 307, 3rd floor, Maruti Chamber, Steel Market, Kalamboli, Dist. Thane. ..RESPONDENTS

Mr R.D. Bhuibhar, Advocate for appellant;

CORAM : N.W. SAMBRE, J.

DATE : 17th APRIL, 2017

ORAL ORDER :

Heard Mr. Bhuibhar, learned Counsel for

the appellant.

2. Learned Counsel for the appellant would urge that the judgment delivered by learned Motor Accident Claims Tribunal, Washim in Motor Accident Claims Petition No. 94 of 2012 is not sustainable on the ground that the tribunal has failed to appreciate the issue of composite negligence on the part of bullock cart rider and he would then urge that the appellant has already discharged his burden by calling upon the driver of the vehicle to produce his driving licence.

3. The facts as are necessary for deciding the appeal are as under :-

Respondent Suresh along with his wife was riding bullock cart, which was hit from behind by the vehicle i.e. truck bearing registration No. CG 07 C 7807 on 12th August, 2012.

4. As a consequence, post mortem report at Exhibit-27 speaks of his wife Sheela died of severe

injuries causing hemorrhage shock.

5. The claimant in support of his claim examined PW-1 Suresh at Exhibit-24 and on the other hand, the appellant has examined one Idris Khanwala at Exhibit-33.

6. The tribunal, after having analyzed the entire evidence, awarded compensation of Rs. 3,61,000/- with interest @9% p.a. vide judgment and award dated 16th April, 2016.

7. In the wake of submissions made by Mr. Bhuibhar, learned Counsel for the appellant, in my opinion, following point arise for consideration.

> (i) Whether the learned tribunal has committed error in refusing to accept the submissions of appellant on the issue of service of notice on the driver about production of driving licence and whether there was breach of policy?
>
> (ii) Whether the claimants were negligent in riding bullock cart?

8. Having considered the oral evidence as brought by PW-1 along with other documentary evidence viz., copy of first information report at Exhibit-26, spot panchnama, inquest panchnama, post mortem report, death certificate etc., it is required to be noted that the offending vehicle gave dash to bullock cart from behind. It is then to be noted that spot panchnama and first information report speak of above referred issue resulting into registration of crime against the driver of offending vehicle. The evidence of PW-1, who is eye witness to the incident, speaks voluminous about rash and negligent driving of offending vehicle, which has given rise to the accident in question. The documentary evidence referred supra viz., first information report and spot panchnama also confirm the evidence of PW-1.

9. In my opinion, the claim of composite negligence or negligence on the part of bullock cart rider is rightly rejected by the tribunal. As such, no interference is warranted on the said issue.

10. Whether there was breach of policy condition and notice issued by insurance company for production of driving licence was appreciated or not is required to be assessed based on material available on record.

11. The insurance company though has issued notice calling upon the driver of offending vehicle to produce driving licence, however, from the record, it could be inferred that such notice was never served on the driver of offending vehicle. In view thereof, tribunal proceeded to answer the said issue against the insurance company. Once the insurance company has not discharged its burden so as to establish that there was breach of policy condition, in my opinion, the award of compensation does not call for any interference. As such, appeal fails, stands dismissed.

12. In view of dismissal of the first appeal, civil application stands disposed of.

(N.W. SAMBRE, J.)

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