

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1100 OF 2008

Bajaj Allianz General Insurance Co. Ltd.
Through its Branch Manager
2nd Floor, Adalat Road,
Aurangabad.

Appellant

Versus

1. Nandabai w/o Murlidhar Jadhav
age 50 years, occ. household
r/o Karanjgaon, Tq. Vaijapur
Dist. Aurangabad.
2. Navnath s/o Murlidhar Jadhav
age 26 years, r/o as above.
3. Vaijinath s/o Murlidhar Jadhav
age 20 years, r/o as above.
4. Yashoda d/o Murlidhar Jadhav
age 24 years, r/o as above.
5. Rukhman d/o Murlidhar Jadhav
age 22 years, r/o as above.
6. Ramrao s/o Bajirao Jadhav
age 95 years, r/o as above.
7. Ratnakar s/o Bhaskar Dabhade
age 26 years, occ. labour
r/o Golwadi, Post Dahegaon
Tq. Paithan, Dist. Aurangabad.
8. Bhaskar s/o Gajanan Dabhade
age 60 years, occ. business
r/o Golwadi, Post Dahegaon
Tq. Paithan, Dist. Aurangabad.

Respondents

Mr. S.G. Chapalgaonkar, advocate for appellant.
Mr. S.S. Pande, advocate for respondents 1 to 5.

CORAM : M.S. SONAK, J.
DATE : 25th JANUARY, 2018

ORAL JUDGMENT :

1. This appeal is directed against the judgment and award dated 20.08.2007 made by the Motor Accident Claim Tribunal, Aurangabad (MACT).

2. Mr. Chapalgaonkar, learned counsel for appellant submits that there is no evidence on record to sustain the finding that the insured vehicle was at all involved in the accident. He points out that in this case the First Information Report was lodged after almost 14 days from the date of alleged accident and even, the First Information Report only indicates that the accident was caused by an unknown vehicle. He points out that the spot panchanama also does not indicate involvement of the insured vehicle. He points out that opponent nos. 1 and 2 i.e. driver and owner of the vehicle filed specific written statement denying involvement of their vehicle. He points out that no eye-witnesses were examined and, in the absence of any such evidence, the tribunal, was not at all justified in proceeding on the basis that the insured vehicle was involved in the accident and, on such basis, fastening liability on the appellant-insurance company.

3. Mr. Chapalgaonkar submits that in this case, there is no dispute that the driver of the insured vehicle had no licence. Therefore, this is the case of fundamental breach of the insurance policy. On this ground also, liability ought not to have been fasten on the insurance company. He submits that in the facts and

circumstances of the present case, even the pay and recover order ought not to have been made.

4. On the aspect of involvement of the insured vehicle, it is true that the First Information Report was lodged 14 days after the accident. There is explanation that at that stage the informant was unaware about the vehicle involved and the details of the driver and owner. The record indicates that police investigated the matter and, on the basis of such investigation, found that the insured vehicle which was driven by Ratnakar and owned by Bhaskar was involved in the accident. On such basis, police filed charge-sheet against Ratnakar for rash and negligent driving.

5. Appellant-insurance company, through private investigator, made investigation. Investigation report was produced by appellant-insurance company. This report also indicates that Ratnakar had admitted to the investigator that he was driving the insured vehicle at the time of accident.

6. On perusal of the record, it seems that the driver and owner of the vehicle did file written statement denying involvement of their vehicle in the accident. However, none of them stepped into the witness box to depose to that effect. Atleast, the driver ought to have stepped into witness box and deposed what was pleaded by him in the written statement. The insurance company also did not summon the driver as witness.

7. In the aforesaid circumstances, applying the test of preponderance of probabilities, it cannot be said that the finding

as regards involvement of the insured vehicle is based on no evidence. There is evidence on record to sustain such finding and accordingly, there is no reason to interfere with the impugned award.

8. The MACT, has infact held that appellant-insurance company is exonerated from liability of payment of compensation since, the ultimate liability is upon the owner of the driver. However, pay and recover order has been made. Taking into consideration the law laid down by the Hon'ble Supreme Court in S. Iyyapan Vs. United India Insurance Company Ltd., 2013(6) Mh.L.J. 1, there is no legal infirmity in pay and recover order.

9. Since these were the only two grounds urged in support of the appeal, the appeal fails. Respondents shall be entitled to withdraw compensation amount, if deposited in this Court alongwith interest accrued thereon, unconditionally. If, some compensation amount has already been withdrawn subject to filing of undertaking, the undertaking stands discharged.

10. Appeal is hereby dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)