Sarnobat

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1904 OF 2018
ALONGWITH
CIVIL APPLICATION NO. 1905 OF 2018
IN
FIRST APPEAL (STAMP) NO. 34032 OF 2017.

ICICI Lombard General Insurance Co. Ltd. ... Appellant.
Vs.
Sau. Swati Subhash Pawar & Ors. ... Respondents.

Ms. Dipika Prabala I/by Res Juris, for the Appellant.
None for the Respondents.

CORAM : V. M. DESHPANDE, J.

DATE : 20th JULY, 2018.

P. C. :

1. The Civil Application is for condonation of delay. Even as per the applicant there is a delay of 21 days in filing the first appeal challenging the judgment and award dated 6th July, 2017 by learned Member of Motor Accident Claims Tribunal, Satara in Motor Accident Claims Petition No. 272 of 2012.

2. The averments made in the application show that though the award was passed on 6th July, 2017 the application for obtaining the certified copy was submitted on 31st July, 2017 and the said certified copy was received by the counsel for the Insurance Company on 6th

September, 2017 and thereafter, due to procedural activities those required for filing of appeal before this Court there occurred delay.

3. From the averments made in the application it is clear that there is no explanation as to why the certified copy was not applied from 6th July, 2017 to 31st July, 2017, however, the certified copy was applied well within the limitation. In view of the said and looking to the fact that some time consumed in procedural aspects, I am of the view that delay can be condoned and accordingly the delay is condoned.

FIRST APPEAL (STAMP) NO. 34032 OF 2017

4. This is an appeal challenging the judgment and award passed by learned member of MACT, Satara in MACP No. 272 of 2012 whereby the learned member of the Tribunal below allowed the claim petition filed on behalf of the present respondent Nos. 1 to 3 (original claimants) in part and directed the opponent Nos. 1 to 3 in claim petition (opponent No. 3 is the present appellant) to pay the compensation of Rs.24,93,000/- inclusive of no fault liability amount together with interest at the rate of 7% per annum from the date of filing of petition i.e. 9th April, 2012 till its realization.

5. The facts giving rise to the present appeal are in very short compass and they are narrated herein below;

(a) The respondent Nos. 1 to 3 are the daughters of deceased Anandrao Shivram Aagunde. On 19th July, 2011 Anandrao left his house to proceed to Mumbai and in that process he was standing near Bhu-Vikas Bank Chowk, Satara on the road of Satara ST stand to Kondave old Highway. When Anandrao was standing that time respondent No. 4 herein was riding the motorcycle bearing registration No. MH-14/BG-3907 from Satara ST Bus Stand to Kondave side. At the time of driving the motorcycle, he was under the influence of liquor. He drove the motorcycle rashly, negligently and gave fatal dash to Anandrao who was standing on the side of the road causing grievous injury to his head, hand and on other parts of body. Anandrao was immediately taken to the Hospital at Satara and he was indoor patient from 19th July, 2011 till 20th July, 2011. Thereafter, he was shifted for further treatment at Girija Hospital, Satara and Sassoon Hospital, Pune where ultimately he succumbed to the injuries caused to him due to the forceful dash given to him by the motorcyclist on 21st July, 2011.

(b) Respondent Nos. 1 to 3 being his daughters filed a claim pending before the tribunal below. The wife of Anandrao predeceased him. It was stated in the claim petition that Anandrao was residing at Mumbai and was driving his own Taxi having registration No. MMO-3249 and he was earning Rs.700/- to 800/- per day. The claim petition also states that he was earning Rs.10,000/- per moth from his agricultural property at Satara.

The claim petition filed on behalf of the respondent Nos. 1

to 3 was not contested by the respondent No. 4-motorcyclist. Respondent No. 5 contested the petition by filing his written statement (Exhibit 26). In the written statement he admitted his ownership. So also stated that his vehicle was duly insured from 24th August, 2010 to 23rd August, 2011 with the appellant. All other aspects in the claim petition was denied by him. The appellant Insurance Company also filed written statement (Exhibit 43). The main contention of the Insurance Company was that the respondent No. 4 was driving the motorcycle with moderate speed. However, it is the deceased who gave dash to the motorcycle and sustained injuries and therefore, motorcycle rider was not responsible for the same.

(c) The Court below after appreciating the case of parties before it passed the impugned award. Hence, this appeal.

6. Heard the learned counsel for the Insurance Company in extenso. Also perused the grounds raised in the memo of appeal. According to the learned counsel for the appellant, respondent No. 4 was not having valid driving license resulting in breach of policy. It is also the submission of the learned counsel that respondent No. 4 was under the influence of liquor at the time when he was driving the motorcycle and therefore, the Insurance Company is not responsible for making any payment towards compensation. It is the further submission of learned counsel for the appellant that the daily income

that was considered by the Court below was on higher side and therefore, it is submitted that the appeal needs admission.

7. The offending motorcycle MH-14/BG-3907 was insured with the appellant and at the time of accident there was a valid insurance is not disputed fact. Satara City Police Station has registered an offence against the respondent No. 4 for his rash and negligent driving vide crime No. 341 of 2011 is also an admitted position.

8. Once it is an admitted position that at the time of accident the offending vehicle was duly insured with the appellant Insurance Company and in absence of any iota of evidence that there was a contributory negligence on the part of the deceased the Insurance Company cannot get itself absolved on a specious ground that there is a breach of policy by the owner of the vehicle. In such case it is always open for the Insurance Company to pay and recover from the owner of the vehicle.

9. In so far as quantum is concerned, from the school leaving certificate of the deceased (Exhibit 68-A) the date of birth of deceased was 1st June, 1961. Thus on the date of his death i.e. on 24th July, 2011 he was 48 years of age. At the relevant time deceased was holding valid driving license to run a Taxi in Mumbai (Exhibit 72). Though in the claim petition it was claimed by the claimants that the deceased used to get agricultural income, in my view it was not rightly considered by

the Court below for the reasons mentioned in the judgment. However, in absence of any positive evidence in rebuttal the Court below has correctly reached to the conclusion that the deceased used to earn daily Rs.700/- to 800/-. The court below looking to the age of the deceased has correctly applied the multiplier of 13 as per the law laid down by the Hon'ble Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation, AIR 2009 Supreme Court 3104.*** The Court below had also given just compensation for the medical expenses, funeral expenses and compensation towards love and affection. No perversity is noticed in the impugned judgment. Consequently, the appeal is devoid of its substance and the appeal is dismissed.

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10. Since the main appeal is dismissed, this application for stay does not survive and it is disposed of.

[V. M. DESHPANDE,J.]