IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 FIRST APPEAL NO.2420 OF 2018
WITH
CA/4480/2018 IN FA/2420/2018
WITH
CA/3610/2019 IN FA/2420/2018

UNITED INDIA INSURANCE CO. LTD.,
THR ITS BRANCH MANAGER, AURANGABAD
VERSUS
SAYYAD JAVED SAYYAD MUZAMMIL AND ANR

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Mr. S.G. Chapalgaonkar, Advocate for the appellant

Mr. M.V. Ghatge, Advocate for the respondent No.1

Mr. A.N. Patale, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20th AUGUST, 2019

PER COURT :

1 Present appeal has been filed by the insurance company challenging the order and Award passed under Section 140 of the Motor Vehicles Act, 1988 (order below Exh.5) in M.A.C.P. No.177/2011 dated 16.03.2017 making the insurance company liable to pay compensation along with the owner.

2 Present respondent No.1-original claimant has come with a case

that he met with an accident at about 7.30 p.m. on 12.06.2010 when he was proceeding near Bharat Building Material Suppliers, Nanded on Wajegaon to Degloor Naka road. He was travelling in auto rickshaw bearing No.MH 26/H-2060 as labour. He was on his work to load and unload the goods from the said vehicle. It is stated that the said auto rickshaw was hit by Tata vehicle bearing No.MH 26/H-5704, which had come from opposite direction. It is stated that the accident took place due to the negligence on the part of the Tata vehicle. The said vehicle was owned by original respondent No.1 and it is stated that it was insured with respondent No.2 on the date of the accident. It is also stated that the claimant received serious injuries including the injury in the nature of displaced Bonicervical fracture of neck, femur etc.. Therefore, he has filed the petition under Section 166 of Motor Vehicles Act to get compensation, in which he filed application under Section 140 of the M.V. Act to get interim compensation of Rs.25,000/- together with interest.

3 The owner though served remained absent. The insurance company has filed say-cum-written statement and denied all the averments in the petition. It has been specifically denied that the Tata vehicle bearing registration No.MH 25/H-5704 was insured with it on the date of accident. Other statutory defences have also been taken in the alternative.

4 After hearing both sides and perusing the documents on record

the learned Tribunal has allowed the application on 16.03.2017 holding both the respondents liable, jointly and severally, to pay compensation of Rs.25,000/- to be paid within one month and in case of failure to be paid interest from the date of the petition till actual realization. This order is under challenge in this appeal.

5 Heard learned Advocate Mr. S.G. Chapalgaonkar for the appellant, learned Advocate Mr. M.V. Ghatge for the respondent No.1 and learned Advocate Mr. A.N. Patale for the respondent No.2.

6 It has been vehemently submitted on behalf of the appellant that a cover note photo copy has been produced along with the petition by the claimant, which has been considered by the learned tribunal. In fact, the said vehicle was never insured with the appellant on the date of the accident. It appears to be a fake document and therefore, complaint was filed with police on 08.06.2017 by the Divisional Manager and on the basis of said report the investigation is going on. There ought to have been some documentary evidence before the learned Tribunal to hold the insurance company liable to pay compensation along with the owner. That aspect has not been considered.

7 The learned Advocate appearing for the original claimant

supported the reasons given by the Tribunal.

8 The first and the foremost aspect i.e. required to be considered is, as to whether any authentic document, on which it can be said, that the vehicle was insured with the respondent No.2 (present appellant) was before the Tribunal. The cover note, which was produced on record, was a photo copy and it appears from the contents of the application as well as the petition it was explained as to from whom the said document was fetched by the claimant. If it would have been through police, then there would have been an endorsement on the said document, but such endorsement in the form of signature of the PSO and/or the seal and stamp of the police station is not appearing on the said document. If we brushed aside the said photo copy, then there was nothing before the learned tribunal to come to a conclusion that the offending vehicle was insured with the respondent No.2. This aspect ought to have been considered by the learned Member, M.A.C.T., Nanded. Unless the vehicle would have been duly insured with the respondent No.2 the liability could not have been fastened on the insurance company. Therefore, the appeal deserves to be allowed. However, it is made clear that the said order as against the original owner would be executable. Further, if at all at a later point of time, during the pendency of the petition, it would be established that the vehicle was insured with any insurance

company including the present appeal, then definitely the claimant would be entitled to get amount of compensation from such insurance company, if all the parameters are proved by him. With these observations, following order is passed.

ORDER

1 Appeal is hereby allowed.

2 The order passed below Exh.5 in M.A.C.P. No.177/2011 dated 16.03.2017 to the extent of holding the present appellant-original respondent No.2 liable to pay compensation is hereby set aside.

3 It is clarified, the rest of the order is kept as it is.

4 No order as to costs.

5 Amount deposited by the insurance company be refunded to it.

6 Civil Applications are disposed of.

(Smt. Vibha Kankanwadi, J.)

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