IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.218 OF 2019

The New India Assurance Co. Ltd
Through it's Divisional Manager,
Aurangabad Divisional Office, D.O.I.,
Above Mahesh Auto, Ajay Engineering
Compound, near Kranti Chowk,
Adalat Road, Aurangabad. ...Appellant

Versus

1. Prakash Omprakash Lodha
Age 37 yrs, Occ: Business
R/o At & Post: Sonai,
Tal. Newasa, Dist. Ahmednagar.

2. Phatangade Vitthalrao Annasaheb
Age: Major, Occ: Business
R/o Bhatkudgaon,
Tal. Shevgaon, Dist. Ahmednagar.

3. Ramkisan Rangnath Waghmode
Age: 39 years, Occ: Driver
R/o Bhatkudgaon,
Tal. Shevgaon,
Dist. Ahmednagar. ...Respondents

...

Mr. A.B. Gatne, Advocate for Appellant.
Mr. Amol S. Gandhi, Advocate for Respondent No.1.

...

CORAM : P.R. BORA, J.
DATED : 22nd JANUARY, 2019.

ORAL JUDGMENT:-

. Heard Shri A.B. Gatne, the learned counsel appearing for the appellant-insurance company and Shri Amol Gandhi, the learned counsel appearing for the respondent i.e. original claimant.

2. The insurance company has preferred the present appeal against the judgment and order passed in Motor Accident Claim Petition No.46 of 2014 decided by the Motor Accident Claims Tribunal at Newasa on 24.06.2015. Respondent no.1 had filed the aforesaid claim petition claiming compensation on account of the injuries caused to him in the vehicular accident happened on 21.04.2007 having involvement of a Mahindra Pick up van bearing registration no.MH-16-Q-6005 owned by present respondent no.2 and insured with the appellant-insurance company. It was the contention of respondent no.1 that the alleged incident caused because of the sole negligence of the driver of the offending pick up van. It was also the contention of respondent no.1 that because of the injuries caused to him in the alleged accident, he was subjected to incur huge expenses and he incurred permanent disability which has resulted in causing loss in his earning capacity. Respondent no.1 had therefore claimed the compensation of Rs.3,00,000/- from the owner and insurer of the Mahindra Pick up van. The Tribunal after having assessed the evidence on record has awarded the compensation to

the tune of Rs.2,56,700/- jointly and severally from the owner and insurer of the Mahindra Pick up van. Aggrieved by, the insurance company has filed the present appeal.

3. Shri A.B. Gatne, the learned counsel appearing for the appellant-insurance company assailed the impugned judgment mainly on following three grounds:

i) That though the insurance company has sufficiently proved that the owner of the offending pick up van committed breach of the policy conditions by allowing the person not holding the valid driving licence to drive the said pick up van, the Tribunal has wrongly held the appellant-insurance company liable to indemnify the insured;

ii) That the Tribunal has wrongly held the driver of the pick up van solely responsible for occurrence of the alleged accident though from the material on record the negligence on part of respondent no.1 i.e. original claimant was explicit and;

iii) That the Tribunal has wrongly held the income of the claimant to the tune of Rs.4,000/- per month without any sufficient evidence therefor.

5. I have perused the impugned judgment and award and the evidence on record. As has come on record, the driver of the offending pick up van was holding the driving licence to drive light motor vehicle. It is the contention raised on behalf of the appellant-insurance company that since the said driver was not holding the valid driving licence to drive the transport vehicle, the breach of policy condition was committed by the owner of the said pick up van since he has allowed the person not holding the valid driving licence to drive his pick up van. In the circumstances, as argued by the learned counsel for the appellant, the Tribunal must have exonerated the insurance company from its liability to indemnify the insured.

6. The objection so raised by Shri Gatne cannot be sustained in view of the law laid down in the case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited, 2017 AIR(SC) 3668***. As held by the Hon'ble Supreme Court in the aforesaid judgment,

'light motor vehicle' as defined in Section 2(21)of the Motor Vehicles Act, 1988 would include the transport vehicle as per the weight prescribed in Section 2(21) r/w Section 2(15) and Section 2(48) of the Act. Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of the Amendment Act No.54/1994. In the present matter, nothing is brought on record by the insurance company to show that the weight of the offending pick up van was exceeding 7,500 k.g. so as to exclude the said vehicle from the definition of light motor vehicle. In the circumstances, the objection so raised deserves to be turned down.

7. The second objection raised on behalf of the insurance company is as about the finding recorded by the tribunal in respect of the sole negligence of the driver of the pick up van. According to the learned counsel appearing for the appellant, in occurrence of the alleged accident, the claimant also had contributed by driving his motor cycle negligently. In light of the objection so raised, when I perused the discussion made by

the Tribunal on the issue, it does not appear to me that the Tribunal has committed any error in holding the driver of the pick up van solely negligent in occurrence of the alleged accident. I, therefore, do not see any reason to cause any interference in the findings so recorded.

8. The third objection raised by the insurance company is about the income of the present respondent no.1 i.e. original claimant, which has been considered by the Tribunal while determining the amount of compensation. According to Shri Gatne, the learned counsel appearing for the insurance company, in absence of any documentary or sufficient evidence as about the income of the claimant, the Tribunal could not have held the income of the claimant more than the notional income. In view of the evidence on record, it is difficult to agree with the objection raised on behalf of the appellant-insurance company. As has come on record that the claimant was carrying the business of selling batteries on commission basis. The learned Tribunal having regard to the nature of the business being carried out by the claimant has

held his income to the tune of Rs.4,000/- per month. It does not appear to me that the Tribunal has committed any error in holding income of the claimant to the said extent. It cannot be said that the tribunal held the income of the claimant arbitrarily on higher side.

9. Thus, none of the objection as has been raised by the appellant-insurance company is found sustainable. The appeal, therefore, deserves to be dismissed and is accordingly dismissed.

10. In the result, the following order is passed:-

ORDER

[I] The appeal is dismissed, however without any order as to the costs

[II] Respondent No.1 i.e. original claimant is permitted to withdraw the amount of compensation deposited by the insurance company in this court along with interest accrued thereon. Since according to the learned counsel appearing for respondent no.1, the amount is correctly deposited in terms of the award, the award passed in MACP No.46/2014 shall be held to have been fully satisfied.

(P.R. BORA, J.)

Mujaheed//