

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

First Appeal No.1/2011
with
Civil Application No.2674/2010
with
Civil Application No.409/2018
with
Civil Application No.3/2011

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.Nikhil Mehta i/b .KMC Legal Venture for the Appellant and Applicant in Civil Application No.2674/2010 and 409/2018
Mr. Jayant Bardeskar for Respondent No.1 in the First Appeal and the Civil Applications and for the Applicant in Civil Application No.3/2011

CORAM: K.K.TATED, J.
DATED : OCTOBER 18, 2019

P.C.

1 Heard. The learned counsel for the Appellant submits that Respondent No.2 is duly served. The statement is accepted.

2 This court by order dated 15.02.2011 issued notice to the Respondent stating that the matter shall be decided finally at the stage of admission itself.

3 Hence, by consent, the matter is

taken up for final disposal at the stage of admission itself.

4 By this First Appeal, the Appellant – Insurance Co. challenges the judgment and award dated 21.01.2010 passed by the MACT kolhapur in MACP No.457/2008 holding that the Respondent-Claimants is entitled to sum of Rs.1,29,000/- by way of compensation with interest @ 9% p.a.

5 The learned counsel for the Appellant Insurance Co. submits that in the present proceeding in an accident which occurred on 06.05.2008 the Respondent claimant's Truck bearing No.MH-09/A-6800 was damaged. Hence, the Respondent-Claimants had filed Application u/s.166 of the Motor Vehicles Act, 1988 for damages of Rs.2,14,866.39 towards the damages of the truck.

6 The learned counsel for the Appellant submits that the Tribunal has erred in coming to the conclusion that the Respondent-Claimants is entitled to compensation of Rs.1,49,800/-. He submits that the compensation awarded by the Tribunal is on higher side and same is without considering the evidence

on record. He submits that though the Tribunal has specifically held that the Insurance Co. is not liable to pay compensation and only Respondent No.2 i.e. Sudarshan Road Carrier is liable to pay compensation, but the tribunal held that the compensation shall be paid by the Insurance Co. and recovered from Respondent No.2. He submits that the said order passed by the Tribunal is bad in law. Hence, it is liable to be set aside.

7 On the other hand, the learned counsel for the Respondent No.1 -Claimant has vehemently opposed the First Appeal. He submits that the compensation awarded by the Tribunal is in fact on lower side. He submits that the claimants had filed Application u/s.166 of the Motor Vehicles Act, 1988 claiming damages in respect of the said truck and also placed on record all other relevant documents. He submits that apart from those documents, the claimant examined witness No.2 at Exhibit-29. Mr.Satish Tahasildar, Surveyor, who carried out survey when the truck was brought in A-One garage for repairs. He submits that the Surveyor issued estimate of cost of repairs to the extent of Rs.1,42,980/- at

Exhibit-30. He submits that witness No.2 admitted in his certificate that he charged sum of Rs.5515/- towards survey. He submits that the claimant spent more than Rs.2,00,000/- on repairs of the truck. Therefore, the compensation awarded by the Tribunal is reasonable. Therefore, there is no question of entertaining the present First Appeal.

8 On the basis of the submissions made by both the parties, following points arise for my consideration :

a. Whether the Insurance Co. is liable to pay compensation for loss of vehicle ? - **Yes**

b. Whether the amount of compensation awarded by the Tribunal is on higher side? - **No**

9 It is to be noted that in the present proceeding the vehicle of Respondent no.2 was insured with the Appellant therefore the Tribunal is right in holding that the Insurance Co. is liable to pay compensation on behalf of the owner. Therefore, the issue No.(a) is answered in the affirmative.

10 So far as issue No.(b) is concerned, the Respondent No.1-Claimant has examined witness No.2 Satish Tahsildar, Surveyor, who surveyed the truck when it was brought for repairs at A-One Garage. The Surveyor submitted that he had issued survey report showing that the claimants suffered loss of Rs.1,30,777/-. Not only that the surveyor have also admitted the fact that he charged sum of Rs.5,515/- towards the survey report. These facts are recorded by the Tribunal in para 5 of the impugned judgment and award.

11 Considering the observations made by the Tribunal in para 5 and 6 of the impugned judgment and award I am of the opinion that the compensation / damages awarded by the Tribunal is reasonable. In fact, the claimant had spent more amount on repairs. Hence, issue no.(b) is answered in the negative.

12 In view of the above mentioned facts, I do not find any substance in the First Appeal.

13 Hence, following order is passed:

a. The First Appeal stands dismissed.

b. In view thereof, the Civil Application stands dismissed as infructuous.

c. A sum of Rs.25,000/- deposited by the Appellant at the time of filing the First Appeal be transferred to the MACP Kolhapur in MACP No.457/2008 along with accrued interest.

(K.K.TATED, J.)