IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 731 OF 2018
WITH
CIVIL APPLICATION NO. 2346 of 2019

Reliance General Insurance Co. Ltd.
Through its Corporate Office,
4th Flr, Chintamani Avenue,
Off Western Express Highway,
Goregaon (E), Mumbai. ..Appellant

v/s.

1. Bamshankar Dhanpat Pandit
Aged 22 yrs, res. At
C/o. Khatoonbi Room
Bhagvati Chawl,
Behind Krishna Medical,
Jawahar Nagar, Khar (E),
Mumbai 400 051

2. Mr. Siddharth Seal
Age Adult,
B-65/620, MIG Colony,
Bandra (E), Mumbai 400 051 ..Respondents

Mr. Rahul Mehta I/b. KMC Legal Venture for the Appellant.
Mr. T.J.Mendon for the Respondent no.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 5th AUGUST, 2019.

ORAL JUDGMENT.

1. With consent of the parties, the appeal is heard finally at the stage of admission.

2. Being aggrieved with the judgment and award dated 23rd March, 2018 in MACP No. 630 of 2011 passed by the learned Member of the MACT, Mumbai, the Appellant-Insurance Company has filed this appeal.

3. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.1,67,500/- to the respondent no.1 (original claimant) with interest at the rate of 8% per annum from the date of application till its realization.

4. It was the case of the respondent No.1 - Claimant that on 19.3.2011, while he was proceeding from Pali Naka towards Bandra, a car bearing No. MH-43-M-4134 dashed against his auto-rickshaw. As a result, he sustained grievous injuries resulting in permanent disablement. It is the case of respondent No.1 that the accident was caused due to rash and negligent driving by the driver of the offending vehicle, which was owned by the respondent No.2 and insured by the Appellant – Insurance Company. The respondent No.1 therefore filed an application under Section 166 of M.V.Act claiming

compensation of Rs.2,00,000/-.

5. The insured did not contest the proceeding despite due service of notice. The appellant -Insurance Company denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Appellant-Insurance Company also claimed that the driver of the offending vehicle did not possess a valid and effective driving license and that he was prosecuted for committing offence under Section 3 of the Motor Vehicles Act. The Appellant-Insurance Company therefore claimed that it is not liable to indemnify the insured for breach of terms and conditions of the policy.

6. The Tribunal, after considering the evidence on record, recorded a finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal, upon considering the age and income of the respondent no.1 – claimant, the nature of the injuries and the extent of permanent disablement suffered by the respondent no.1 awarded total compensation of Rs.1,67,500/- with interest at the rate of 8% per anum. Being aggrieved by the impugned judgment and award, the

Appellant-Insurance Company has filed this appeal.

7. Mr. Rahul Mehta, the learned Counsel for the Appellant at the outset submits that the challenge in the appeal is restricted only to one ground viz the liability of the Appellant- Insurance Company to indemnify the insured. He submits that the driver, of the offending vehicle was not holding a valid and effective driving license and hence the Appellant - Insurance Company is not liable to indemnify to respondent No.1 insured for breach of terms and conditions of the insurance policy.

8. It is seen that though the Appellant-Insurance Company had raised a specific defence disputing its liability to indemnify the insured, no issue in this regard was framed. The Appellant-Insurance Company had not called upon the Tribunal to frame such issue and had further not adduced any evidence to prove that the insured had committed breach of terms and conditions of the policy. The learned counsel for the Appellant–Insurance Company has also not been able to state that the driver of the offending vehicle has been held guilty for driving the vehicle without effective and valid driving license. In fact he fairly concedes that there is no evidence to prove the defence

raised by the Appellant-Insurance Company. In the light of the above, in my considered view, the Appellant-Insurance Company cannot be absolved of its liability to indemnify the insured.

9. Since the Appellant-Insurance Company has not pressed the other grounds raised in the appeal nothing survives in the matter. Hence, the appeal is dismissed with no order as to costs.

10. Civil Application stands disposed of in view of the dismissal of the appeal.

(ANUJA PRABHUDESSAI, J.)

Prasanna P. Salgaonkar

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Date: 2019.08.08 16:48:49 +0530