IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.235 OF 1999

Oriental Insurance Company …Appellant
Versus
Beena Bhagwan Ramchandani and Ors. ...Respondents
…..
Mrs. Anita A. Agarwal for the Appellant.
None for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 29th AUGUST, 2019.

ORAL JUDGMENT:

The learned counsel for the Appellant states that the Tribunal has not fastened any liability against the Appellant No.3, who is the original opponent No.9. She therefore seeks leave to delete the name of the Appellant No.3 from the cause title of the Appeal memo. Leave is granted. Amendment to be carried out forthwith.

2. This Appellant- Insurer of the vehicle in a motor vehicular accident, challenges the judgment and award dated 29th October, 1988 passed by the learned Member, M.A.C.T., Thane in Motor Accident Claim No.212 of 1987. By the impugned judgment and award the Tribunal has awarded compensation of Rs.5,74,000/- with interest @ 12% per annum from the date of the application till final realization.

3. The brief facts necessary to decide this appeal are as under:-

The Respondent Nos.1, 2 and 3 were the Claimants in claim Application No.212 of 1987, arising from the motor vehicular death of Bhagwan Ramchandani. On 18th December, 2016 the deceased-Bhagwan was travelling by an Ambassador Car bearing No.MFC 2603. It is alleged that a dumper bearing No.MMS 2263, which was owned by the Respondent No.5 herein and insured by the Appellant took a sudden turn and dashed against a Maruti Car, Fiat Car and then the Ambassador car in which the deceased was travelling. Said Bhagwan died as a result of the injuries sustained in the said accident. The Claimants alleged that the accident was caused due to rash and negligent driving by the driver of the dumper and other cars involved in the accident. Hence, they filed an application under Section 166 of the Motor Vehicle Act, 1988 claiming compensation of Rs.63,00,000/- from the driver, owner and the insurer of the dumper, Maruti Car and Fiat Car.

4. The claim was contested by the Appellant mainly on the ground that their liability in respect of third party was limited to

Rs.1,50,000/-.

5. The Tribunal upon considering the evidence on record held that the accident was caused due to rash and negligent driving by the driver of the Fiat and dumper. The Tribunal therefore held that the insured as well as the insurer of these vehicle are liable to pay compensation to the Claimants. Upon considering the age and earning capacity of the deceased and other relevant factors, the Tribunal has awarded total compensation to the tune of Rs.5,74,000/-. The Tribunal did not accept the contention of the insurer of the dumper truck that their liability in respect of the third party was limited to Rs.1,50,000/-. The Tribunal therefore directed the insured as well as the insurer of the dumper to pay 75% of the compensation and the insured and the insurer of the Fiat Car have been directed to pay 25% of the compensation. Being aggrieved by this judgment and order, the Appellant-Insurance Company has preferred this appeal.

6. Though the Appellant-Insurance Company has raised several grounds in the Appeal memo, the learned counsel for the Appellant submits that the Challenge in the appeal is restricted to quantum of compensation payable by the Appellant-Insurance

Company. The learned counsel for the Appellant has urged that under the policy the liability of the Appellant-Insurer is limited to Rs.1,50,000/-. Hence the Tribunal has erred in directing the Appellant-Insurance Company to pay 75% of the compensation.

7. It is not in dispute that the dumper was insured under Policy No.12110/00835, which was valid for the period from 4/2/1986 to 3/2/1987. The accident had occurred on 18/10/1986. The Appellant had filed its written statement in the year 1988, wherein it was pleaded that the liability under the policy was restricted to Rs.1,50,000/-. Surprisingly, the Appellant did not produce the policy alongwith the written statement but produced only a duplicate of the policy in the year 1999 through its witness Shital Gandhi. The policy produced by the witness is not a photo copy but as admitted by the witness, it was prepared subsequently after the accident. The witness was not associated with this department and had no personal knowledge about the policy. She claims that the policy was prepared based on the documents available in the office. The witness has neither given details of the documents or produced the documents which indicated that the cover under the policy was restricted to Rs.1,50,000/-. This witness has admitted that the bound book of the

policy was not available. This witness has admitted that it is a normal practice to preserve copy of the policy pending proceedings in the Court. Surprisingly, the bound book containing the policy in the present case has been destroyed during the pendency of the proceedings. The witness claims that the notice was given to the insured to produce the policy. She is not aware whether the insured had raised a claim for damages and submitted the original policy alongwith the claim form. It was under these facts and circumstances that the Tribunal has not relied upon the copy of the policy prepared by this witness. Having gone through the evidence and the reasons recorded in the impugned judgment, in my considered view there is absolutely no error in the finding that the Appellant-Insurance Company has failed to prove that its liability is limited to Rs.1,50,000/-.

8. Under the circumstances and in view of discussion supra, there are no reasons to interfere with the impugned judgment. The Appeal is dismissed. It is stated that the Appellant-Insurance Company has already deposited the amount of compensation before the Claims Tribunal.

9. Liberty is granted to the Respondent Nos.1, 2, 3 and 11 to apply for withdrawal of the balance compensation without any security or undertaking.

(SMT. ANUJA PRABHUDESSAI, J.)