IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

First Appeal No.381/2015
with
Civil Application No.1351/2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Mr. D. S. Joshi for the Appellant

CORAM: K.K.TATED, J.
DATED : SEPTEMBER 19, 2019

P.C.

1 Heard. By this First Appeal, the Appellant challenges the judgment and award dated 25.02.2014 passed by the MACT, Mumbai in MACP No.3165/2010 by which the Tribunal held that the Respondent-Claimant is entitled to sum of Rs.1,14,000/- by way of compensation including NFL of Rs.25,000/- with interest @ 7.5% p.a.

2 In the present proceedings because of accident which occurred on 08.05.2010 the Respondent-Claimant sustained injuries. At that time the claimant was 80 years old. Because of accident the claimant was indoor patient from 11.05.2010 to 13.05.2010 in M.T.

Agarwal General Hospital, Mulund. To that effect, the Respondent-Claimant has placed on record discharge card being Exhibit-23 issued by the said hospital. Thereafter the claimant was admitted to Raj Hospital on 13.05.2010 and got discharged on 19.05.2010 for the same injury.

3 The Respondent-Claimant has filed application u/s.166 of the Motor Vehicles Act, 1988 claiming compensation. In support of her case, the claimant has filed affidavit Exhibit- 19 and also relied on certified copies of FIR Exhibit- 20, spot panchnama Exhibit- 21, police statement Exhibit- 22, discharge card Exhibit- 23 issued by the M.T.Agarwal Hospital, copy of insurance policy Exhibit- 24, disability certificate dated 01.10.2011, treatment bills Exhibit- 32 collectively and discharge card of Raj Hospital Exhibit- 30. Against this, the Insurance Company did not adduce any evidence.

4 After considering the evidence on record, the Tribunal held that the claimant is entitled to sum of Rs.1,14,000/- by way of compensation

along with interest @ 7.5% p.a.

5 The learned counsel for the Appellant Insurance Co. submits that the Tribunal has erred in coming to the conclusion that the Insurance Co. is liable to pay compensation though they placed on record documentary evidence to show that the rider of the motor-cycle was having fake driving license. He submits that the license produced by the motor-cycle rider was issued to one Mr. Babulal Bhika Rathod as per the RTO record. To that effect, the Insurance Co. has placed on record a copy of the report of the investigator Sunil R. Dhavan. He submits that the Tribunal has rejected their evidence only on the ground of non entering into the witness box to prove these facts. Hence, the impugned order is liable to be set aside.

6 Considering the submissions made by the learned counsel for the Appellant and the impugned judgment and award following issue arise for consideration:

a. Whether the Appellant proved that they are not liable to pay any compensation because of breach of the terms and conditions of Insurance Policy?

7 It is to be noted that admittedly, no one entered into the witness box on behalf of the Insurance Co. They relied on investigation report showing that the driving license placed on record by the claimant, of the motor-cycle rider Ganeshsing Navalsing was fake but the said report was not proved by the Insurance Co. by examining their witness. Therefore, the Tribunal has rightly held in para 18 of the impugned order that the Insurance Co. has failed to produce any documentary evidence to set aside whether there was any breach of the terms and conditions of the insurance policy. Hence, I am of the opinion that the Appellant has failed to produce any documentary evidence to show that there was breach of terms and conditions of the insurance policy. Therefore, the issue is answered in the negative.

8 Considering the submissions made by the learned counsel for the Appellant and the impugned judgment and award, I

do not find any reason to entertain the First Appeal.

9 Even considering the injuries sustained by the claimant, the compensation awarded by the Tribunal is meager. Hence, following order:

a. First Appeal stands rejected.

b. In view of rejection of the First Appeal, nothing will survive in the Civil Application No.1351/2015 for stay. Same stands rejected as infructuous.

c. The sum of Rs.25000/- deposited by the Appellant at the time of filing the First Appeal be transferred to the MACT, Mumbai in the account of MACP No.3165/2010 along with the accrued interest.

(K.K.TATED, J.)