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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1314 OF 2015
WITH
INTERIM APPLICATION NO.1 OF 2019
IN
FIRST APPEAL NO.1314 OF 2015

Bajaj Allianz General Insurance Co. Ltd. ...Appellant
V/s.
Appasaheb B. Waman & Ors. ...Respondents

Mr.Milind M. Sathaye for the Appellant.

Mr.Chetan G. Patil with Mr.Mandar Bagkar for the for Respondent
Nos.1 and 2.

CORAM : R.D. DHANUKA, J.
DATE : 17TH DECEMBER, 2019.

P.C. :-

1. Not on board. Taken on board.
2. By this first appeal filed under section 173 of the Motor Vehicles Act, 1988 the appellant (original opponent no.2) has impugned the judgment and award dated 1st August, 2013 passed by the Motor Accident Claims Tribunal, Pune in MACP No.951 of 2009 directing the appellant and the original opponent no.1 to pay jointly and severally the compensation of Rs.7,71,000/- including interim compensation along with interest at the rate of of 8% p.a. from the date of petition till realization of entire amount by the respondent nos.1 and 2 herein (original applicants).
3. By consent of the appellant and the respondent nos.1 and

2 (original applicants) the first appeal is heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this first appeal are as under :

4. It was the case of the respondent nos.1 and 2 that on 26th November, 2007 Mr.Ajit A. Waman (hereinafter referred to as the said deceased) was going towards Chakan from Talegaon on his motorcycle. At about 12.30 p.m. when he reached at Joint of Talegaon Road, one motorcycle bearing registration No.MH 14 AR – 5180 came from left side in high speed and dashed to the motorcycle of the deceased thereby deceased sustained grievous injuries and died on the spot. The pillion rider also sustained injuries and there was damage to the motorcycle.

5. The respondent nos.1 and 2 filed the claim application before the Tribunal *inter-alia* praying for compensation. The original opponent no.1 did not file any written statement. The matter proceeded *ex-parte* against the opponent no.1. The appellant herein filed a written statement before the Tribunal and denied the averments made in the application including the age and income of the deceased but admitted that the vehicle in question was insured with it. It was contended in the written statement that the said deceased was driving the motorcycle without any valid and effective license at the time of accident and thus the appellant was not at all liable to pay any compensation to the respondent nos.1 and 2.

6. The Tribunal framed four issues. The respondent no.1 was examined as one of the witness on behalf of the respondent nos.1 and 2 who produced various documents including the medical record and showing the income of the said deceased.

7. Insofar as the appellant is concerned, the appellant also examined two witnesses including the Investigating Officer. The said witness examined by the parties were cross-examined by the advocate for the respondent nos.1 and 2.

8. The Tribunal passed a judgment and award directing the appellant and the original opponent no.1 to pay jointly and severally a sum of Rs.7,71,000/- with interest at the rate of 8% p.a.

9. Mr.Sathaye, learned counsel appearing for the appellant invited my attention to the examination in chief filed by the Investigating Officer Mr.Satish Gangadhar Salwane and would submit that though the said witness had deposed that the driver of the vehicle was not having valid and effective driving license at the time of accident, the Tribunal has erroneously rendered a finding that the appellant had failed to discharge the burden of proof shifted upon the appellant that the driver of the offending vehicle was not having valid and effective driving license at the time of accident. No further submission is advanced by the learned counsel for the appellant before this Court.

10. A perusal of the examination in chief filed by Mr.Satish Gangadhar Salwane whose evidence is strongly relied upon by the appellant indicates that in his examination in chief he had deposed that he has collected the documents from its owner and driver i.e. R.C. Book, Tax Receipt, Insurance papers. They had not produced driving license of the driver of the offending vehicle though demanded.

11. The said witness did not produce any document to show that the driver of the offending vehicle was given a notice that he was not holding valid and effective driving license at the time of accident. The said witness also admitted that he did not have custody of any other document.

12. A perusal of the findings rendered by the Tribunal clearly indicates that this aspect is discussed by the Tribunal and dealt with in detail and more particularly in paragraph 4.After considering the evidence produced by both the parties, the Tribunal rightly held that the appellant had failed to discharge the burden shifted upon the appellant after examination of witness by the respondent nos.1 and 2 to the effect that the driver of the offending vehicle was solely responsible for the accident which caused death of the said deceased.

13. In my view merely on the basis of the statement made by the said witness in his examination in chief that the driver of the

offending vehicle was not having valid and effective driving license at the time of accident, the appellant would not prove the said allegation. The fact remains that the owner and the driver of the offending vehicle did not produce driving license. It is also an admitted position that no witness summons was issued by the appellant on the owner and the driver of the offending vehicle nor any officer was examined from the office of R.T.O. to prove that the driver of the offending vehicle was not having valid and effective driving license at the time of accident. In my view, since the appellant failed to discharge the burden cast upon the appellant, the Tribunal was right in holding that the appellant having failed to prove such allegations, no finding could be rendered that the driver of the offending vehicle was responsible for the accident causing death of the said deceased.

14. No other issue is urged before this Court by the learned counsel for the appellant. In my view, there is no infirmity in the findings rendered and the conclusion drawn by the Tribunal.

15. I therefore, pass the following order :-

- a). First Appeal No.1314 of 2015 is dismissed.
- b). The respondent nos.1 and 2 shall be entitled to recover the amount as directed by the Tribunal. If there is any shortfall in the deposit made by the appellant, the appellant would pay the balance

within two weeks from the date of computation of the shortfall by the Tribunal. If there is any surplus amount left after payment of decretal amount to the respondent nos.1 and 2, the Tribunal to return such surplus amount upon production of an authenticated copy of this order.

c). In view of the order passed as aforesaid, the Interim Application No.1 of 2019 for withdrawal of the amount stands disposed off.

d). The office is directed to transmit an amount of Rs.25,000/- deposited by the appellant to the M.A.C.T., Pune expeditiously.

e). All parties as well as the Tribunal to act on the authenticate copy of this order.

(R.D. DHANUKA, J.)