

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 217 OF 2012

**ICICI Lombard General Insurance
Company Ltd.**

..... Appellant

VERSUS

Suresh Vitthal Ghadashi & Ors.

..... Respondents

Mr.Nikhil Mehta, i/b. KMC Legal Venture for the Appellant.

Ms.Pooja Yadav, i/b. Mr.D.R.Mahadik for the Respondent no.6.

CORAM : R.D. DHANUKA, J.

DATE : 5th MARCH, 2020

P.C.

By this appeal filed under section 173 of the Motor Vehicles Act, 1988, the appellant (original opponent no.2) has impugned the judgment and award dated 26th November, 2010 passed by the Motor Accident Claim Tribunal, Ratnagiri and directing the appellant to pay a sum of Rs.2,48,750/- to the original claimant with interest at the rate of 6% p.a. All the respondents are served. None appeared for the respondent nos. 1 to 5 when the matter was called out. The first appeal is heard finally. Some of the relevant facts for the purpose of deciding this first appeal are as under :-

2. The original claimant Suresh Vitthal Ghadashi (respondent no.6) had claimed compensation in the sum of Rs.5 lac for the injury sustained by him in the motor vehicle accident occurred on 1st July, 2008 caused by driver of the offending vehicle under section 166 of Motor Vehicle Act. It was the case of the original claimant that on 1st July, 2008, he was travelling by Mahindra Max Vehicle owned by the

original respondent no.5 which was insured with the original respondent no.6 (appellant herein). He was travelling as a gratuitous passenger. When the said jeep arrived near Sangameshwar railway station at 6.30 a.m., from Goa side, the offending vehicle bearing registration no. GJ-06/TT/7958 came in high speed from wrong side and gave dash to the said motor vehicle in which original claimant was travelling as a gratuitous passenger causing injury on his head and neck. He was admitted in Mangaon Government Hospital and was thereafter shifted to Gramin Hospital, Deorukh and then was shifted to Civil Hospital, Ratnagiri and thereafter took further treatment at KEM Hospital, Mumbai. The claim made by the original claimant was resisted by the appellant. The claimant examined the witnesses. The appellant also examined clerk of the RTO Office before the tribunal. The tribunal framed six issues for examination.

3. Mr.Mehta, learned counsel appearing for the appellant states that though the appellant had raised various issues in the appeal memo, the appellant only presses for an order to pay and recover under section 149 (2) of Motor Vehicle Act against the respondent no.3. Learned counsel invited my attention to the findings rendered by the tribunal in paragraphs 28, 30, 33 to 35 in support of the submission that though the appellant has examined the representative from the RTO Office (junior clerk) Vadodora who deposed that the truck involved in the accident was registration no. GJ-06/TT/7958 was having permit for plying the truck only for Gujarat and has produced copy of permit register, the tribunal has rendered perverse findings against the appellant and did not allow the appellant to recover from respondent no.3 under section 149(2) of the Motor Vehicles Act. It is submitted by the learned counsel that the respondent nos. 2 and 3 admittedly did not

enter the witness box and even did not bother to file the written statement.

4. Learned counsel for the respondent no.6 relied upon the judgment of the Supreme Court in case of ***Amrit Paul Singh vs. TATA AIG General Insurance Co. Ltd. and others, (2018) 7 SCC 558*** and would submit that the onus was on the owner and driver of the offending vehicle to prove that they had obtained permit to drive the offending vehicle when the accident had taken place and not on the appellant insurer.

5. A perusal of the findings rendered by the tribunal indicates that the junior clerk of the RTO who was examined by the RTO as one of the witness before the tribunal admitted that the offending vehicle was having permit for driving the vehicle only in the State of Gujarat. He has also produced permit register at Ex.58. There was no evidence led by the owner and the driver of the offending vehicle to prove that the offending vehicle had any permit to ply the offending vehicle in Maharashtra at the time of the said accident.

6. A perusal of the said judgment of the tribunal clearly indicates that instead of relying upon the evidence of the junior clerk of the RTO, who has produced various authentic documents showing permit of the offending vehicle in the State of Gujarat, the tribunal has erroneously held that the Insurance Company has failed to prove that the owner of the offending vehicle has committed breach of insurance policy.

7. In my view, the findings rendered by the tribunal is contrary to

and ignoring the evidence led by the appellant and more particularly junior clerk of RTO who had produced various documents including copy of permit register showing that the offending vehicle was granted permit only to ply in the State of Gujarat.

8. Nothing was brought on record by the insurer to prove that he had permit to ply the offending vehicle in the State of Maharashtra. Supreme Court did not interfere with the order passed by the tribunal as well as High Court directing the insurer to pay compensation amount to the claimants with interest at the first instance and thereafter to recover from the truck owner and the driver. The principles laid down by the Supreme Court in the said judgment in case of **Amrit Paul Singh** (supra) clearly apply to the facts of this case.

9. The onus was on the respondent nos. 2 and 3 to prove that they had obtained even a temporary permit to ply the offending vehicle in the State of Maharashtra. The tribunal has shifted the onus on the appellant to prove that the driver and owner of the offending vehicle had no such temporary permit to ply the offending vehicle in the State of Maharashtra. The view taken by the tribunal is clearly contrary to the principles of law laid down by the Supreme Court in case of **Amrit Paul Singh** (supra) and also section 66 of the Motor Vehicles Act 1988. This part of the judgment and award deserves to be set aside.

10. I pass the following order :-

- (a) The appellant is liable to pay the amount awarded by the Motor Accident Claim Tribunal, Ratnagiri in Motor Accident Claim Petition No. 41 of

2009 at the first instance to the original claimant Suresh Vitthal Ghadashi and thereafter to recover the said amount from the respondent no.3 under section 149(2) of the Motor Vehicles Act, 1988. The judgment and award dated 26th November, 2010 is modified to this extent.

(b) It is made clear that this court has not altered any part of the said judgment except the operative part and the reasons recorded therein on the ground of pay and recover under section 149(2) of the Motor Vehicles Act, 1988.

(c) The First Appeal is disposed of in the aforesaid terms.

(d) The office is directed to transmit Rs.25,000/- deposited by the appellant as statutory deposit to the concerned MACT expeditiously.

(e) Parties as well as the tribunal to act on the authenticated copy of this order.

[R.D.DHANUKA, J.]