IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REJECTED CASE NO. 40 OF 2019
ALONGWITH
INTERIM APPLICATION NO. 1 OF 2019
IN
FIRST APPEAL (ST) NO. 12939 OF 2017

United India Insurance Company Ltd. **….. Appellant/ Applicant**

VERSUS

Vaibhav Raju Rupnar & Ors. **….. Respondents**

Mr.Ketan Joshi for the Appellant.

Mr.T.S.Ingale for the Respondent and for the Applicant in IA.

CORAM : R.D. DHANUKA, J.

DATE : 13th FEBRUARY, 2020

P.C.

By this First Appeal, the appellant (original opponent no.1) has impugned the judgment and award dated 28th December,2016 passed by the Motor Accident Claim Tribunal, Sangli in M.A.C.P.No. 118 of 2013 thereby allowing the case made by the respondent no.1 partly and directing the appellant to deposit a sum of Rs.26,72,799/- with interest at the rate of 8% per annum from the date of filing the petition till realization of the entire amount.

2. By consent of the appellant and the respondent no.1, appeal is heard finally at the admission stage.

3. Some of the relevant facts for the purpose of deciding this First Appeal are as under :-

4. On 14th October,2012 at about 8.30 p.m., the respondent no.1 was proceeding on motor cycle bearing no. MH-10/AX-3469 along with his father on old Budhagaon Road. The motor cycle was being driven by the father of the respondent no.1. The offending auto rickshaw bearing no. MH-10/K-2336 came from opposite direction which was in high speed. The said rickshaw went to the wrong side of the road and gave forcible dash to the motor cycle of the respondent no.1. The respondent no.1 was thrown on the road and suffered various injuries. The respondent no.1 filed an application for compensation before the M.A.C.T.

5. In paragraphs (43) and (46) of the impugned judgment and award, the tribunal considered the oral evidence led by the parties. The junior clerk from the office of the RTO Mr.Shriniwas Vilas Ghodake who was examined by the appellant produced on record the extract of driving licence of the offending vehicle. The said witness admitted in his cross examination that addition in the driving licence can be made from any office of R.T.O. all over India. He admitted that he cannot positively say that the driver has not taken licence for light motor vehicle three wheeler transport vehicle from any other RTO.

6. After considering the oral and documentary evidence, the Tribunal held that the driver of the offending vehicle was possessing light motor vehicle non commercial vehicle. The appellant did not lead any evidence to show that the owner of the offending vehicle had knowledge that the driver of the offending vehicle was not holding endorsement in the licence to drive light motor vehicle commercial and had engaged him without due care and caution. The Tribunal

accordingly held that the breach of policy could not come in the way of the respondent no.1 and directed the appellant to pay compensation, jointly and severally along with the driver and owners of the offending vehicle.

7. Mr.Joshi, learned counsel for the appellant invited my attention to various findings recorded by the Tribunal and also the grounds of challenge in the appeal memo. It is submitted that the appellant has raised an issue that the driver of the offending vehicle was not having proper and valid licence at the time of the accident.

8. Learned counsel however fairly invited my attention to the judgment of Supreme Court in case of ***S.Iyyapan vs. United India Insurance Company Limited and another, (2013) 7 SCC 62*** and in particular paragraphs 15 and 17 and judgment of Supreme Court in case of ***Mukund Dewangan vs. Oriental Insurance Company Limited, (2017) 14 SCC 663*** and in particular paragraph 1 and paragraphs 60.1 and 60.4 and would submit that the contentions raised by the appellant before the Tribunal that the driver of the offending vehicle did not have valid licence to driver commercial vehicle has been negatived by the Supreme Court.

9. Mr.Ingle, learned counsel for the respondent no.1 relied upon the findings rendered by the Tribunal and also judgments referred by Mr.Joshi, learned counsel for the appellant fairly before this court.

10. Supreme Court in case of ***S.Iyyapan*** (supra) adverted to its earlier judgment in case of ***National Insurance Co. Ltd. vs. Annappa Irappa Nesaria, (2008) 3 SCC 464*** and held that insurer cannot disown

its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. It is held that in any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

11. Supreme Court in case of ***Mukund Dewangan (supra)*** has answered the issues referred to the larger Bench i.e. 'whether a driver who is having licence to drive light motor vehicle and is driving transport vehicle of that class is required additionally to obtain an endorsement to drive a transport vehicle?' It is held by the Supreme Court in the said judgment that the light motor vehicle as defined in section 2(21) of the Motor Vehicles Act, 1988 would include a transport vehicle as per the weight prescribed in section 2(21) read with sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.

12. It is further held by the Supreme Court that the effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle. It is held that if a driver is holding licence to drive light motor vehicle, he can drive transport

vehicle of such class without any endorsement to that effect. The principles laid down by the Supreme Court in case of ***S.Iyyapan*** (supra) and in case of ***Mukund Dewangan (supra)*** clearly applies to the facts of this case.

13. In my view, though there was no endorsement of 'commercial' 'light motor vehicle' in the licence obtained by the driver of the offending vehicle that would not disentitle the claimant for making claim against the insurer. It is already held by the Supreme Court that the right if any of the insurer would be under section 149 of the Motor Vehicles Act, 1988.

14. No other submissions are urged by the learned counsel for the appellant. I do not find any infirmity in the impugned judgment and award rendered by the M.A.C.T. First appeal is devoid of merit and is accordingly dismissed.

15. In view of the dismissal of the First Appeal, Interim Application No.1 of 2019 does not survive and is accordingly disposed of.

16. It is made clear that the respondent no.1 would be entitled to recover the entire amount from the amount deposited by the appellant with the M.A.C.T. after deducting the amount already withdrawn, if any. It is made clear that if there is any shortfall in depositing the decreetal amount deposited by the appellant, the same shall be deposited by the appellant with the M.A.C.T. within two weeks from the date of computation of the shortfall amount by the M.A.C.T. If there is any surplus amount deposited by the appellant, the same shall be refunded to the appellant after paying the decreetal amount to the

respondent no.1.

17. Office is directed to transmit the statutory deposit of Rs.25,000/- deposited by the appellant to the concerned M.A.C.T. expeditiously.

18. The parties, concerned M.A.C.T. as well as the Registry to act on the authenticated copy of this order.

19. No order as to costs.

[R.D.DHANUKA, J.]