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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 360 OF 2020
WITH
CIVIL APPLICATION NO. 364 OF 2020

LIBERTY GENERAL INSURANCE CO. LTD. THR. ITS AUTHORIZED REPRESENTATIVE NEERAJ SHIVANGIKAR ....APPELLANT

V/s.

SHRI. AMOL BALWANT RABADE AND ORS .....RESPONDENTS

Ms. Deepika Prabala i/b Res Juris for the appellant
Mr. Jayant J. Bardeskar for respondents

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 26, 2021.

P.C.:

1] On March 1, 2015, respondent-claimant while riding motorcycle bearing no. MH-09-BT-8764 met with an accident having hit by another motorcycle bearing registration no. MH-09-CN-0989. Respondent-claimant suffered head injuries and as such claim came to be allowed vide impugned judgment dated 20/04/2019. As such, this appeal.

2] Counsel for the appellant-insurance company would urge that breach of policy could be inferred from the record as the appellant has set up a defence that driver of the insured vehicle was not holding a valid driving licence. So as to substantiate the said claim, she has relied on copy of F.I.R. and other investigation papers which were part of charge-sheet wherein driver was charged with flouting of relevant sections under the Motor Vehicles Act. She would further claim that from the investigation papers it could be inferred that driver was not wearing a helmet and as such, case of contributory negligence can be inferred. So as to substantiate such contention, she has drawn support from the Division Bench Judgment of High Court of Kerala in the case of **Siby Paul, S/o Paul V/s. Praveen Kumar G. N., Seetha Bhavan & Others [MACA NO. 1644 OF 2004]**.

3] While countering aforesaid submissions, counsel for respondent-claimant would support the Judgment impugned as according to him, burden casted on the appellant-insurance company to demonstrate breach of policy was not discharged. According to him, even if it is presumed that driver was not wearing a helmet, there has to be material on record to infer that same was cause of the accident and the injuries suffered was because of fault of the rider who was not wearing a helmet.

4] Considered rival submissions.

5] It is a settled position of law that appellant-insurance company if comes out with a plea of breach of policy, burden shifts on the appellant. Admittedly, against the claimant, police authorities have registered an offence under the Motor Vehicles Act for not holding a valid driving licence. However, insurance company has failed to demonstrate that such charge against the claimant has resulted into his conviction. Merely because rider/claimant was not wearing helmet that by itself will not act as rider on the right to claim compensation. In view of defence of appellant on the issue of claimant not wearing helmet, the appellant should have lead evidence to establish the said default and such act has resulted into contributing the cause of accident. It is not the case of appellant, had the claimant would have used helmet, the accident would not have occurred.

6] On the issue of breach of policy condition, the least that was expected of the appellant was to examine employee from the office of Regional Transport Office so as to establish non holding of driving licence. As such, burden seems to be not discharged. The contention of the appellant insurance company are rejected to that effect.

7] Apart from above, that claim that rider was not wearing helmet and as such case of contributory negligence could have been inferred is also liable to be rejected as the appellant has failed to demonstrate that by not wearing such helmet, claimant has contributed in the accident and by such act, he was responsible to the accident in question. The Tribunal while dealing with the issue of contributory negligence has rightly recorded finding that rider of offending vehicle should have been examined to demonstrate that driving of motorcycle by the claimant was at fault and from his evidence, the issue of contributory negligence could have been established.

8] In the aforesaid background, in my opinion, the claim put forth by the appellant on two grounds i.e. breach of policy conditions and contributory negligence cannot be claimed to be established.

9] Appeal as such lacks merits, stands dismissed.

10] In view of dismissal of appeal, Civil Application for stay does not survive. Same stands disposed of accordingly.

[NITIN W. SAMBRE, J.]