IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.1077/2008

Vithabai wd/o Natthu Ahirkar
aged about 46 years, Occ. Nil,
r/o Arsoda, Tq. Armori,
Dist. Gadchiroli .....**APPELLANT**

...V E R S U S...

1. Dineshkumar s/o Nabilal Thakre,
r/o Shiwani, Post Shiwani,
Tq. Dist. Gondia – 441 614 (MS)

2. Branch Manager,
New India Assurance Company Ltd.
Corporate Office at Jaistambh Chowk,
Ganesh Nagar, Gondia, Dist.
Gondia-4410601 (MS) ...**RESPONDENTS**

Mr. P. P. Pendke, Advocate for appellant.
Mr. H. P. Lingayat, Advocate for respondent no.1.
Mrs. Anita Mategaonkar, Advocate for respondent no.2.

CORAM:- V. M. DESHPANDE, J.
DATED :- 25.11.2021.

ORAL JUDGMENT

1. This is an appeal filed by Maharashtra State Road Transport Corporation, Gadchiroli in Motor Accident Claim Petition No. 25/2001 whereby the tribunal dismissed the claim petition filed on behalf of the appellant.

2. Heard Mr. Pendke, learned counsel for appellant, Mr.Lingayat, learned counsel for respondent no.1 and Mrs.Mategaonkar, learned counsel for respondent no.2.

3. An accident took place on 28.04.1996. The appellant was travelling in a Matador having registration No. MH-35/771 owned by respondent no.1. In the said accident, the appellant suffered injuries while one Liladhar Daji Meshram died. The appellant filed claim petition. The said was registered as Claim Petition No.25/2001. The legal representatives of Liladhar also filed claim petition. The said was registered as Claim Petition No.24/2009. The claim petition filed on behalf of the legal representatives of the deceased was partly allowed. Therefore, they were dissatisfied and they approached to this Court by filing First Appeal No. 485/2008. The appeal filed for the said death claim was allowed by this Court (Coram: Arun D. Upadhye, J.) on 04.02.2019.

3. Learned Member of the tribunal dismissed the claim petition on the ground that appellant was travelling in a matador

and therefore the insurance company was not liable to pay any compensation.

4. The appellant filed insurance policy on record. It is at Exh.-37. From the policy, it is clear that respondent no.1 took policy from respondent no.2 insurance company and it was valid till 08.01.1997. The accident took place on 28.04.1996. Thus, when accident took place, insurance policy was in existence and was in operation.

There is no dispute about the appellant suffering leg injury.

5. In the claim petition filed on behalf of legal representatives of deceased, insurance company was exonerated on the ground that there was a breach of the policy.

6. Policy in said claim petition was at Exh. 48. Whereas the very same policy is at Exh.-37 in the present matter. It would be useful to reproduce hereinbelow the observations of this Court in First Appeal No.485/2008. Paragraph 14 of the said judgment reads thus:

"14. As regards, the responsibility of Insurance Company is concerned, the learned Tribunal did not considered the Insurance Company's Police (Exhibit-48), and wrongly exonerated the Insurance Company from its liability. From perusal of Exhibit No.48, it reveals that the amount of Rs.50/- was paid for one NFPP [non-fare paying passenger]. However, it reveals that amount of Rs.60/- was paid for 3 + 1 and total amount of insurance was 7866 + 393. The insurance cover note is at Exhibit No.39 of the same vehicle."

Since policy Exh.-48 and present policy Exh.-37 are very same, benefit of the earlier judgment has to be extended in favour of the appellant.

7. The claim petition in my view therefore was wrongly dismissed by the learned Member of the tribunal. Since the tribunal dismissed the claim petition on the ground of maintainability, there was no discussion about quantum of compensation. Therefore, normally this Court would have remanded back the matter to the tribunal for determination of the compensation. However, Smt. Anita Mategronkar, learned counsel for insurance company; looking to the quantum of compensation

claimed by the appellant and the policy of the insurance company, which they are adopting while settling the matters in Lok Adalat; submits that instead of remanding back the matter and put the lady in the gamut of the trial again, respondent insurance company will pay an amount of Rs.2,00,000/- along with interest at the rate of 5% per annum from the date of accident i.e. 28.04.1996 till its actual realization.

The stand adopted by the learned counsel for the insurance company is appreciated.

8. In that view of the matter, following order is passed.

ORDER

(i) The appeal is allowed.

(ii) Judgment and order passed by Member, Motor Accident Claims Tribunal, Gadchiroli in M.A.C.P. No.25/2001 filed by the appellant is hereby allowed.

(iii) Respondent n.2 shall pay Rs.2,00,000/- along with interest at the rate of 5% per annum from the date of accident i.e. 28.04.1996 till its realization within four months from today. The amount be deposited before Motor Accident Claims Tribunal, Gadchiroli.

(iv) After the amount is so deposited, the Motor Accident Claims Tribunal shall allow appellant-Vithabai wd/o Natthu Ahirkar to withdraw the said amount along with accrued interest thereon.

JUDGE

kahale