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

FIRST APPEAL NO. 1056 OF 2007

Oriental Insurance Co. Ltd.
Divisional Manager, Divisional Office
No.2, Palm Road, Civil Lines, Nagpur .. **APPELLANT**

Versus

1. Raghunath s/o Nilkanth Chavan,
Aged 62 years, Occu. Service,
R/o Mahatma Gandhi Nagar, Hudkeshwar
Road, Nagpur

2. Haricharan Singh s/o Sunder Singh,
Aged Major, Occu. Business,
R/o Model Town, New Delhi or
Minawali Galli, Gwalior

.. **RESPONDENTS**

Mr. A.M. Quazi, Advocate with Smt. S.O. Tapadiya, Advocate for appellant
Mr. D.R. Khapre, Advocate for the respondent No.1

CORAM: V.M. DESHPANDE, J.

DATE : 01/12/2021

JUDGMENT :

By filing the present appeal, Oriental Insurance Company Limited is challenging the Judgment and Award passed by the learned Member of Motor Accident Claims Tribunal, Nagpur dated 09/07/2007 in Claim Petition No. 671/1998.

2. By the impugned Award, the learned Member of the Tribunal partly allowed the Claim Petition filed by the respondent No.1. Under the Award, the present appellant and present respondent No.2 were jointly and severally directed to pay Rs.1,08,320/- to the Claimant along with the future interest @7.5% from the date of petition i.e. 02/04/1998, till its realization.

3. Heard Shri A.M. Quazi, learned counsel for the Insurance Company and Shri D.R. Khapre, learned counsel for the Claimant. Nobody appeared for the respondent No.2 inspite of the service.

4. The respondent No.1 hereinafter will be referred to as "Claimant" and the appellant will be referred to as "Insurance Company" for the sake of brevity.

5. At the relevant time, the Claimant was working as a Range Forest Officer. He was discharging his duties as Plantation Officer at Seloo, District Wardha on 11/11/1993 when accident took place at 12:30 p.m. at Nagpur – Wardha Road at Seloo. At that time, the Claimant was riding motorcycle belonging to the Government having registration No. MGU-6224. Shri Atram, Assistant Plantation Officer was a pillion rider. When their two wheeler came near Seloo Petrol Pump, offending vehicle i.e. a truck bearing No. MP-07/G-

0127 gave violent dash, resulting into the injury. The Claimant suffered in all 18 fractures. For initial two days, he was at Sewagram Medical College and thereafter on 14/11/1993, he was taken to the Government Medical College and Hospital at Nagpur, where he was indoor patient till 07/1/1994. Operations took place there. The Handicap Board assessed the permanent disability of the Claimant to the extent of 52%. With these basic pleadings, the Claim Petition was filed. The notices of the Claim Petition were issued to the Insurance Company as well as the owner of the truck. The owner of the truck chose not to contest the Claim Petition and therefore, the Claim Petition was proceeded *ex-parte* against him. The Insurance Company filed a written statement (Exh.15) and denied the liability to pay compensation on the ground that the offending truck was not insured with the Insurance Company.

6. The Claimant apart from him examined Dr. Shri Ravi Dashputra, Dr. Sanjeev Choudhary and Dr. Ramchandra Deoghare. These three Doctors are the Orthopaedic Surgeons. Besides that, First Information Report (Exh.51), spot panchanama (Exh.52), injury report (Exh.54), copy of certificate issued by Dr. Dashputra showing implant removal is necessary (Exh.57) and Handicap Certificate (Exh.84) were filed. Various bills and discharge cards

from the Hospitals were also filed during the claim proceedings before the Tribunal.

In rebuttal, the Insurance Company did not adduce any evidence.

7. It will be useful to make a reference that the learned Member of the Tribunal on rival pleadings have framed various issues, including issue No.2 i.e. "Whether truck No. MP-07/G-0127 is owned by respondent No.1 and insured with respondent No.2". The learned Member of the Tribunal found affirmatively that the offending truck was insured with the Insurance Company and passed the impugned Award.

8. Before me only point that was canvassed by the learned counsel for the Insurance Company is that the offending vehicle was not insured with the Insurance Company. Except this, no other submissions were pressed into service.

9. The learned Member of the Tribunal while discussing the issue No.2 in respect of the insurance of the offending vehicle with the Insurance Company has in detail discussed the evidence in paragraph No.12 of the Judgment and Award.

10. In the Claim Petition itself, the Claimant has stated that the offending truck having registration No. MP-07/G-0127 is insured with the Oriental Insurance Company Limited (Insurance Company) under cover note No.2/No.992167 covering the validity period from 14/08/1993 to 13/08/1994 from Raipur Branch.

11. The record shows that at the of time of the filing of the Claim Petition under list of documents (Exh.50) various documents were filed before the Tribunal, including the copy of the policy of Insurance Company. Obviously, it is not expected from the Claimant to lead the evidence to prove the nature of the policy taken by the insured. The onus will always on the Insurance Company to establish validity and liability under the insurance policy.

12. Mere denial of the pleadings in respect of the insurance policy / cover note is not sufficient from the side of the Insurance Company. It was obligatory on the part of the Insurance Company to step into the witness box through authorized officer and to show to the Court on the basis of various documents, including the accounts, which are only in the custody of the Insurance Company to show that the Insurance Company never received any premium from the owner of the offending vehicle in respect of the offending

vehicle. In my view that the Insurance Company has failed to discharge the onus and burden on it to prove its pleadings made in the written statement. Inasmuch as pleadings has to be proved by the party which assert the same. In my view, best possible evidence was with the Insurance Company, however, the Insurance Company failed to put-forth the same before the Court. In view of this position, I am of the view that no exception can be taken to the finding recorded by the learned Member of the Tribunal that the offending vehicle was insured with the Insurance Company. Resultantly, I pass the following order.

ORDER

i. The appeal is dismissed.

ii. No costs.

JUDGE

MP Deshpande