

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 834 OF 2011

United India Insurance Co. Ltd.,
Through it's Divisional Office,
Divisional Manager, Osmanpura,
Aurangabad.

Appellant

Versus

1. Vithal Hariba Madde
Age : 35 years, occ : agri.,
R/o Bhadi, Taluka and
District Latur.
2. Dnyanoba Namdeo Kamble
Age : 40 years, occ : business
R/o Bhadi, Taluka and
District Latur.
3. Uttam Dnyanoba Kamble
Age : 20 years, occ : driver
R/o Bhadi, Taluka and
District Latur.

Respondents

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Mr. S.V. Kulkarni, Advocate for the appellant.
Mr. S.P. Urgunde, Advocate for respondent No.1.
Mr. M.R. Jamdade, Advocate for respondent Nos.2 and 3.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 17.08.2022
Judgment pronounced on : 07.09.2022

Judgment:

1. The appellant Insurance Company, who was the original respondent No.2 in Motor Accident Claim Petition No.356/2005, has preferred this appeal against the judgment

and award dated 02.12.2008 passed by the learned Principal District Judge and Ex-officio Member of the Motor Accident Claims Tribunal at Latur (hereinafter referred to as “the learned Tribunal”), only on the ground of involvement of the offending vehicle i.e. goods auto rickshaw bearing registration No. MH-24-F-6536.

2. It is not disputed that the present respondent No.1, who is the original claimant, met with an accident on 17.05.2005 at about 10.30 a.m. on Mamdapur to Bhadi road when he was walking from the road and had reached near the field of one Vishnu Badgire. It has been alleged that the aforesaid offending vehicle had given him dash from backside. It be noted here that the appellant Insurance Company has not challenged the compensation amount as calculated by the learned Tribunal. The appellant Insurance Company has only raised the issue that the said offending vehicle was not at all involved in the accident and the owner of the said vehicle, in collusion with the original claimant / victim, had filed the said claim petition.

3. The learned Counsel for the appellant Insurance Company submits that the accident occurred on 17.05.2005, but on that day the alleged offending vehicle was not

registered at all, but still CW-2 Vishnu Badgire deposed before the learned Tribunal by stating its registration number. Further, the learned Counsel for the appellant Insurance Company submits that there was inordinate delay of about five months in lodging the complaint in respect of the accident by the claimant – respondent No. 1, which ultimately lodged on 02.10.2005. He further submits that the date of registration of alleged offending vehicle was 10.06.2005, and therefore, CW-2 Vishnu Badgire could not have deposed the number of the said vehicle, as it was not allotted at all on the date of the accident. With these doubtful circumstances, the learned Counsel for the Insurance Company, has challenged the impugned award by saying that the aforesaid vehicle was not at all involved in the accident. Besides the oral submissions, learned Counsel for the appellant – Insurance Company also relied on the judgment of this Court dated 24th September 2019 in First Appeal No.606/2019 (M/s Shriram Insurance Co. Ltd. vs Vanita Dhanaji Marekar and others).

4. On the contrary, learned Counsel for the original claimant i.e. present respondent No. 1, strongly opposed the submissions of the learned Counsel for the appellant Insurance Company and submitted that the learned Tribunal

has given appropriate findings and held that the alleged offending vehicle was involved in the accident. He pointed out certain observations from the impugned judgment in respect of the involvement of the vehicle and ultimately prayed for dismissal of the appeal.

5. On the other hand, learned Counsel for respondent Nos.2 and 3, who are the owner and driver respectively of the alleged offending vehicle, remained absent.

6. With the assistance of the learned Counsel for appellant as well as learned Counsel for respondent No.1, I have gone through the impugned judgment alongwith record and proceedings of the original claim petition.

7. Having gone through the entire documents on record alongwith oral evidence led on behalf of the original claimant, it appears that there is no dispute about the fact that respondent No. 1 – original claimant met with an accident on the fateful day and sustained injury. This appeal is filed only on the ground that the alleged offending vehicle was not at all involved in the said accident. For that purpose, learned Counsel for the appellant Insurance Company relied on the various dates. According to him, the accident though

took place on 17.05.2005, but on the relevant day the alleged vehicle was not at all registered. Despite that fact the so called eye witness i.e. CW-2 Vishnu Badgire deposed that the goods auto rickshaw bearing registration No. MH-24-F-6536 had given dash to the claimant. This appears one of the suspicious circumstances. The second suspicious circumstance, according to the learned Counsel for the appellant Insurance Company, is that the complaint in respect of the accident was lodged by the claimant after about five months i.e. on 2nd October 2005, without any explanation. With these suspicious circumstances, the appellant Insurance Company has challenged involvement of the offending vehicle in the accident.

8. It is significant to note that the learned Tribunal has not framed any such issue wherein the involvement of the vehicle is under challenge. On the contrary, it appears that the learned Tribunal, without framing such issue, has discussed in para-13 of the impugned judgment as to whether the auto rickshaw bearing registration No. MH-24-F-6536 was involved in the accident. On perusal of the said observation, it is clearly evident that the learned Tribunal, by comparing the engine number and chassis number mentioned in the

insurance policy with the registration particulars of the vehicle, has come to the conclusion that the same was involved in the accident. However, at the same time there is observation of the learned Tribunal in respect of the evidence of CW-2 Vishnu Badgire that his evidence was not convincing particularly when he deposed about registration number of the said auto rickshaw which was not allotted at all on the date of the accident, but in fact it was subsequently allotted on 10.06.2005 when the said vehicle was registered for the first time. However, the insurance policy on record clearly indicates that the said vehicle was insured for the period starting from 13.05.2005 to 12.05.2006, covering the date of the accident. There cannot be any serious doubt that the vehicle can be plied on road before it's registration, provided that it should be insured first.

9. Thus, the suspicion as raised by the appellant Insurance Company appears only on two circumstances, that (1) deposing registration number of the offending vehicle by the eye witness on the day of accident which was not allotted at the relevant time and (2) lodging of complaint belatedly. Thus, it can be seen that the evidence of CW-2 Vishnu Badgire to the extent of deposing about registration number

of the offending vehicle is not convincing at all, but it is quite possible that he came to know about the said number later on, as he deposed much after the accident took place.

10. Learned Counsel for the appellant – Insurance Company heavily placed reliance on the judgment in First Appeal No. 606 of 2019 (supra). I have carefully gone through the said judgment, wherein this Court had reversed the finding of the concerned Tribunal of awarding compensation and dismissed the claim by observing that the alleged offending vehicle in that case was not at all involved in the accident because of the doubtful circumstances apparent from the facts of that case.

On perusal of the said judgment, it is clearly evident that the victim in that case had died on the next day of the accident and thereafter one informant Balaji i.e. brother of deceased reported the accident belatedly after about 25 days. That means, the victim in that case who died just on the next day of the accident, had not any occasion to lodge report of the accident. The informant, who had lodged the report in that case, had not seen the offending vehicle. Further, the other eye witnesses were also not examined. Perhaps for the said reason, this Court had suspected the involvement of the vehicle in the said case.

11. However, this is not a death claim, but the victim is still alive and had deposed before the Tribunal about the manner in which the accident took place, and therefore, even if we ignore the evidence of CW-2 Vishnu Badgire so far as it relates to stating of registration number of the offending vehicle, but the injured claimant, who actually got injured in the accident, has deposed about involvement of the offending vehicle.

12. It is extremely important to note that though the appellant Insurance Company has raised suspicion about involvement of the offending vehicle in this appeal, but no such contention was made in it's written statement filed before the learned Tribunal by way of special pleadings. Further, the cross-examination of claimant or CW-2 Vishnu Badgire clearly indicates that there was no specific suggestion to these witnesses on behalf of the appellant Insurance Company that the offending vehicle was not at all involved in the accident. Interestingly, there is suggestion otherwise to the claimant from the Insurance Company that the accident in question was in fact caused due to own negligence of the claimant. Needless to say, that the said suggestion is flatly denied by the claimant, but it indirectly suggests that the

Insurance Company tried to show that the claimant was in fact negligent at the time of the accident. Thus, considering these aspects, the observations made in the aforesaid judgment, cannot be made applicable to the present case, as both the cases differ on facts and circumstances.

13. Further, it is also extremely important to note that the appellant Insurance Company cannot be benefited from the latches on the part of the claimant, but it has to stand on it's own leg. Though it is claimed by the appellant Insurance Company that involvement of the vehicle was not there in the accident, but for proving the same it has not examined the present respondent Nos.2 and 3, who are the respective owner and driver of the offending auto rickshaw, especially when both of them had filed their written statement by denying all the adverse contentions made against them by the original claimant before the learned Tribunal. As such, it was necessary on the part of the appellant Insurance Company to examine the driver of the offending vehicle i.e. the present respondent No.3 on the issue of involvement of vehicle in the accident. Therefore, considering all these aspects, this Court comes to the conclusion that the claimant has sufficiently established the fact that the offending vehicle i.e. goods auto

rickshaw bearing registration No. MH-24-F-6536 was involved in the accident and the appellant Insurance Company failed to discharge its burden of proving it otherwise specially by non examination of driver and owner of the same. Thus, the only ground raised by the appellant Insurance Company in the instant appeal does not seem convincing, and therefore, the appeal being devoid of merits, stands dismissed.

14. It appears from the record that this Court, vide order dated 01.04.2011, had allowed the original claimant i.e. respondent No.1 to withdraw 50% of the amount of compensation deposited by the appellant Insurance Company and remaining 50% amount was kept in fixed deposit in the Nationalize Bank. Therefore, on dismissal of the present appeal, the amount of compensation so deposited by the appellant Insurance Company, if not withdrawn partially, be paid to the claimant i.e. present respondent No.1 alongwith accrued interest thereon till date.

15. The appeal is disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)