IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 556 OF 2017

The National Insurance Company Limited …. Appellant
v/s.
Mr. Bharat Kisan Jagdale and anr. …. Respondents

Ms. Poonam Mital for the Appellant.
Mr. Haridas R. Madhukar for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 19th SEPTEMBER, 2022.

P. C. :-

. The Appellant – Insurance Company has challenged the impugned judgment and award dated 09/03/2016 passed by the Member, Motor Accident Claims Tribunal, Satara in MACP No.109/2012.

2. By the impugned judgment and award, the Claims Tribunal partly allowed the Application filed by the Respondent No.1 under section 166 of Motor Vehicles Act and directed the Appellant – Insurance Company and the insured to pay compensation of Rs.2,85,000/- with interest @ 9% per annum from the date of the petition till final realization.

3. The Respondent No.1 has filed the Petition under section 166 of

MV Act alleging that he has sustained injuries in a motor vehicular accident on 04/08/2011 involving Car bearing No.MH-11/AK-8930. The Respondent No.1 had alleged that the accident was caused solely due to rash and negligent driving by the driver of the said Car. He had sustained grievous injuries resulting in permanent disablement of 12%. The claimant was a labourer, 32 years of age and was earning Rs.8,500/- per month. The claimant therefore claimed that he is entitled for total compensation of Rs.7,70,203/-. However, he restricted his claim for Rs.4,00,000/-.

4. The insured did not contest the proceedings. The Appellant – Insurance Company denied that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. The Appellant – Insurance Company also denied the age and income of the deceased and claimed that he is not entitled for compensation as claimed.

5. The Tribunal framed the issues and recorded a finding that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. Upon considering the evidence adduced by the claimants, the Tribunal held that the claimant is entitled for total

compensation of Rs.2,85,000/-. Being aggrieved by this judgment, the Appellant – Insurance Company has filed this Appeal under section 170 of Motor Vehicles Act.

6. Ms. Poonam Mital, learned counsel for the Appellant – Insurance Company states that the challenge is restricted only to the liability of the Appellant – Insurance Company to indemnify the insured on the ground of breach of terms and conditions of the policy. She submits that the driver of the offending vehicle was not holding a valid driving license at the time of the accident and as such, the Appellant is not liable to indemnify the insured.

7. It is to be noted that no such defence was raised in the written statement filed before the Tribunal and Appellant – Insurance Company has not adduced any evidence to prove that the insurer had committed breach of terms and conditions of the policy. Consequently, the Appellant – Insurance Company cannot be absolved of its liability to indemnify the insured.

8. Under the circumstances, the Appeal has no merits and is accordingly dismissed. Statutory deposit be transferred to Claims Tribunal, Satara. Compensation deposited by the Appellant –

Insurance Company be paid to the Respondent No.1 – original claimant along with proportionate interest accrued thereon.

(SMT. ANUJA PRABHUDESSAI, J.)