IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO.1606 OF 2018
WITH
CIVIL APPLICATION NO.1564 OF 2018
IN
FIRST APPEAL (STAMP) NO.1606 OF 2018

Shriram General Insurance Company Ltd. ...Applicant

Versus

Smt. Mandakini Pramod Deokar and Ors. ...Respondents

...

Mr. Nikhil Mehta i/b. M/s. KMC Legal Venture for the Applicant.
Mr. Rajesh More for Respondent Nos.1 to 3.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 1st AUGUST, 2022.

P. C. :-

1. With consent, heard finally at the stage of admission.

2. The Appellant-Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 assailing the Judgment and Award dated 16/03/2017 in M.A.C.P. No.200 of 2013. By the impugned judgment, the Claims Tribunal, Baramati allowed the application filed by the Respondent Nos.1 to 3 under Section 166 of the M.V. Act and held the Appellant and Respondent Nos.4 to 6 jointly and severally liable to pay compensation of Rs.7,82,000/- inclusive of No

Fault Liability with interest @ of Rs.9% per annum from the date of the petition till final realisation of the amount.

3. Respondent No.1 is the widow and Respondent Nos.2 and 3 are the sons of Pramod Deokar, who died in a motor vehicular accident. On 02/03/2013 the deceased was sitting in a shed near Shreepad Petrol Pump at Warkute. It is alleged that there was collision between a gas tanker bearing No.HR-74-5644 and a car No.MH-13-AZ-2272 on Pune-Solapur road near the said Petrol Pump resulting in leakage of gas and explosion of the tanker. The Petrol Pump, hotel and several vehicles were engulfed in the fire. The deceased, who was sitting in a shed near the Petrol Pump also succumbed to burn injuries. The Respondents claimed that the accident was caused due to rash and negligent driving by the driver of both vehicles. The Respondents claimed that the deceased was 53 years of age and was employed as a driver and earning Rs.5,000/- per month. The Respondents filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation from the owner/insured and the insurers of the respective vehicles.

4. The Appellant herein is the insurer of the tanker involved in the accident. The Appellant raised a plea that the vehicle was driven

without a valid driving license and disputed its liability to indemnify the insured for breach of terms and conditions of the policy.

5. The Claims Tribunal after considering the evidence on record held that the deceased had expired due to burn injuries sustained in the accident and held the drivers of both vehicles responsible for the accident. Upon considering the age and income of the deceased the Tribunal awarded compensation of Rs.7,82,000/-. The Tribunal rejected the defence of the Appellant-Insurance Company as regards breach of terms and conditions of the policy and held the insured as well as the insurer of the vehicle jointly and severally liable to pay the compensation.

6. It is stated that the insurer of the offending car No.MH-13-AZ-2272 has not challenged the impugned judgment and has already deposited 50% of the compensation along with proportionate interest and that the Claimants have already withdrawn the said amount.

7. Mr. Mehta, learned counsel for the Appellant-Insurance Company restricts the challenge only to the findings on the issue of breach of terms and conditions of the policy. He submits that the tanker was carrying dangerous and hazardous goods and as such the driver of the vehicle was required to have an endorsement on the

license as prescribed under Rule 9 of the Motor Vehicles, Rules 1989. He submits that there was no such endorsement on the license of the driver of the offending vehicle, resulting in breach of terms and conditions of the policy and for this reason the Appellant is not liable to pay compensation to the insured.

8. The only question for consideration is whether the Appellant-Insurance Company is not liable to indemnify the insured for breach of terms and conditions of the policy. It is to be noted that the defence raised by the Appellant-Insurance Company was rejected by the Claims Tribunal relying upon the decision of the Division Bench of the Madhya Pradesh High Court in ***Baghelkhand Filing Station vs. Brijbhan Prasad, 2006(2) M.P.L.J. 211*** wherein it is held that Rule 9(3) of the M.V. Rules does not increase efficiency of the driver nor in its absence the efficiency of the driver is likely to be reduced in any manner. It only certifies additionally that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature without additional expertise or driving skill. It is held that not making such an endorsement, at the most would be a lapse on the part of the driver or insurer, but this lapse was not the cause of the accident.

9. In the instant case, the driver of the offending vehicle was

competent to drive a transport vehicle. The Claims Tribunal has observed that failure to make an endorsement on the driving license has not resulted in the accident. Hence, there is no fundamental breach and as a consequence thereof the Appellant-Insurance Company cannot be absolved of its liability. There are no reasons to interfere with these findings. Hence, the appeal is dismissed. The Appellant-Insurance Company is directed to deposit balance 50% of the compensation with proportionate interest thereon before the Claims Tribunal within a period of six weeks.

10. The statutory deposit of Rs.25,000/- be transferred to the Claims Tribunal, Baramati.

11. The Claims Tribunal, Baramati, to pay the compensation to the Claimants as per the impugned Judgment and Award.

12. Pending application (s), if any, stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)