IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.923 OF 2019
IN
FIRST APPEAL NO. 1172 OF 2018
WITH
FIRST APPEAL NO. 1172 OF 2018

Rameshwarprasad Ramsamujh Maurya .. Applicant

In the matter between

Reliance General Insurance Company Appellant

Versus

Rameshwarprasad Ramsamujh Maurya .. Respondent

…

Mr.Rahul Mehta i/b KMC Legal Venture for the applicant.
Ms.Darshna Naval i/b Ashish Agarkar & Suraj Sawardekar for the applicant.

CORAM: BHARATI DANGRE, J.
DATED : 25th APRIL, 2022

P.C:-

1 Heard the learned counsel for the Insurance Company and learned counsel for the respondent/claimant.

2 The Appeal is filed by the Insurance Company, being aggrieved by judgment dated 16/3/2017 delivered by the MACT, Thane in MACP No.0100789/2012.

3 On hearing the learned counsel for the appellant and on perusal of the Memo of Appeal, it can be seen that the

judgment is challenged on the ground that the Tribunal has failed into consideration the defence of the Insurance Company, which was specifically set out in the written statement to the effect that the offending taxi was not insured with the Insurance Company and did not cover the period of the accident. Apart from this, the breach of the terms and conditions of the policy were also alleged, but the Tribunal has failed to consider the material aspect of the matter.

4 With the able assistance of learned counsel, I have perused the impugned judgment as well as document placed on record.

The claimant has filed claim for compensation of Rs.One lakh u/s.166 of the Motor Vehicles Act on account of the permanent disability incurred by him in an accident, which took place on 31/8/2012, when as a pedestrian, was crossing the road and was hit by a taxi bearing No.MH-03-F-5624, which was being driven in a rash and negligent manner. The incident resulted into multiple injuries and even an offence vide C.R. No. 289/2012 also came to be registered with Turbhe police station.

5 The applicant was admitted in the hospital initially for period from 31/8/2012 to 1/9/2012 and then shifted to Global 5 Health Care at Vashi, where he was treated an indoor patient from 1/9/2012 to 11/9/2012.

Pleading that he incurred amount more than Rs.Three lakhs for medical treatment and medicines, but, still did not get cured of his disability and he was unable to follow of his normal pursuit of life, including his source of livelihood, he being a vegetable vendor and earning Rs.600/- per day, he claim compensation of Rs.One lakh.

6 The Insurance Company i.e. opponent no.2 filed it's written statement and resisted a claim. A stand was specifically taken that the period of Insurance was not covered in the policy.

7 The Tribunal proceeded to deal with the said submission and noted that the Insurance Company examined one Priyank Shah, the legal Manager of the Insurance Company, in support of their defence, who deposed that the offending vehicle was insured with the vehicle from period from 1/10/2009 to 30/9/2010 and since the accident occurred on 31/8/2012, the policy was not renewed. He however, specifically deposed that there was no record found in the Company's system after 30/9/2010 in respect of the said offending vehicle. In the cross-examination, he admitted that they had appointed the investigator but even the investigator's report was not filed on record.

8 Mr.Priyank Shah, in the course of examination, deposed that they have issued notice to opponent no.1, but even a

copy of the same was not brought on record. Further, the Insurance Company also did not file the premium register in respect of the policies issued to them in the year 2012.

By referring to the aforesaid documents, the learned Tribunal has doubted the evidence of Mr.Priyank Shah deposed on behalf of the Insurance Company. On the contrary, he preferred to believe on the report of PSO, Turbhe police station, reflecting the manner in which the accident had taken place, and in which the applicant was injured. The policy produced by the claimant on record, specifically provided for the period from 3/10/2011 to 2/10/2012, which cover the date of the accident i.e. 31/8/2012.

The applicant sustained multiple grievous injuries and was required to be treated. He examined Dr.Pankaj Tripathi who deposed about his treatment and stated that he had tibia fibula fracture to both legs along with other injuries. CW 3 Vijay Shetty also brought on record the nature of his disabilities which was assessed as 50 to 55% permanent disability and certificate to that effect was produced on record. The learned Tribunal has disbelieved the certificate on the ground that there is nothing on record to show that Dr.Vijay Shetty has carried out X-Ray examination of the applicant at the time of issuing disability certificate.

The Tribunal awarded compensation by taking into account the actual medical expenses, pain and suffering, loss of amenities and compensation for the injuries and disability sustained by him which is duly computed.

9 Recording as above, considering that the negligence was on part of the driver and attributing to contributory negligence of the 25% to the claimant, the compensation was worked out to the tune of Rs.3,59,470/- along with the interest @ 8% p.a. Since the appellant has failed to prove the point that the policy did not cover the date of the incident, by bringing any alternative evidence on record, the Tribunal cannot be said to have erred in not accepting the said defence and granting benefit to the appellant by awarding compensation and fastening the liability, jointly and severally upon the opponent no.1. who failed to appear during the proceedings.

The Appeal do not warrant consideration and is dismissed.

The amount of statutory deposit which is lying in this Court shall be transmitted to the Tribunal.

10 Needless to state that the said amount shall be permitted to be appropriated by the Insurance Company and the claimants shall be permitted to take the amount deposited along with the accruing interest.

(SMT. BHARATI DANGRE, J.)

Tilak