IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 38 of 2019

EFC Logistics India Pvt. Ltd. .. Appellant

Versus

Shri Bhimrao Gangadhar Borade & Ors. .. Respondents

…

Ms. Sneha Agrawal i/b Mr. Lalit. V. Jain for the appellant.
Mr. Sachin Gite for respondent nos. 1 and 2
Mr. V. V. Parashurami for respondent no.3

CORAM: BHARATI DANGRE, J.
DATED : 7th APRIL, 2022

P.C:-

1 On 7/3/2015, at about 8.30 p.m in the evening on Mumbai Agra road at Khadakjam, one Balu B. Borade who was trying to cross the road, was hit by one red colour Tata Mobile Van MH-06-AG-7204, coming from Nashik Road and going to Chandwad. The van being driven in speedy and negligent manner, seriously injured Balu Borade, who sustained injuries on various parts of his bodies i.e. hands, legs etc. and succumbed to them.

The van driver attempted to flee, but the police present on the spot, nabbed him and lodged complaint against him in the police station.

2 The Van was owned by EFC Logistics India Pvt.Ltd, Taluka Uran, District Raigad i.e. the present appellant and it was insured with IFCO Tokio General Insurance Company Ltd.

3 A Claim Petition was instituted before the MACT at Niphad, District Nashik, impleading the owner of the vehicle and the Insurance Company as respondents. The claim was instituted by the parents of the deceased, showing dependency on the premise that the monthly income of the deceased was Rs.15,000/- and the claimants were dependent on him, applicants claimed for compensation of Rs. Seven lakhs, by holding the respondents jointly and severally liable, since their son lost his life in the accident, on account of the rash and negligent driving of the vehicle.

4 The claim was opposed by opponent no.1 denying that the accident occurred on account of the fault of the driver. The police papers were relied upon, to submit that the driver was driving his vehicle on the left side of the road, but the deceased was illegally crossing the busy road, and despite of repeated honking by the driver of opponent no.1, he got confused and started running on the road and injured himself. The liability was, therefore, sought to be avoided by pleading that opponent no.1 was not negligent and he was driving the vehicle by strictly abiding the traffic rules. It was prayed that the claim deserve a

dismissal, since the opponent no.1 was not at fault.

The opponent no.2 i.e. Insurance Company also filed it's written statement and specifically pleaded as under :-

> "Without prejudice it is submitted that the as per Section 134 (c) of the Motor Vehicle Act, 1988, it is the statutory duty of the insured/driver to furnish the particulars of the policy . Time, date & place of accident and other particulars of the accident to the insurer, but the insured-driver has failed to comply the said statutory demand; there is a non compliance which is a mandatory as required u/s 158 of the M.V.Act, 1988 and on this ground also the Opponent is not liable to pay the compensation.
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> Without prejudice it is submitted that the said accident has been caused because of the negligent of the deceased only and he was abruptly came in front TATA Mobile Van No. MH-06/G-7204; there was no negligence on the part of the driver of the TATA Mobile Van No. MH-06/G-7204 therefore the Opponent is not liable to pay the compensation.
>
> It is admitted that by the said accident occurred on 07-03-2015 and as per the documents filed by the Applicant, The TATA Mobile Van No. MH-06/G-7240 was insured with Iffco Tokio General Insurance Company Ltd. Vide Policy No. 85254900 for the period from 30/09/2013 to 29/09/2014. Thus, the date of accident is not covered within the period of policy".

The Specific Stand, of Insurance Company, is that there is no cause of action for the claimants to file a complaint, against the Insurance Company since there was no compliance of Rule 255A of the Maharashtra Motor Vehicle Rules, 1989.

5 In order to support the claim, the claimant no.1 entered into the witness box and brought on record the documents like the FIR, spot panchnama, Inquest Panchnama, vehicle panchnama, post-mortem report, R.C. book etc. The applicants also filed on record a copy of the Insurance policy but the other side vehemently objected by stating that the document is not proved.

Opponent no.1 adduced oral evidence of it's Manager Hemant Rahane. He also produced the original copy of the policy which was also objected. Even the judgment of the JMFC, acquitting the driver Deepak Kanhaiyalal was also brought before the Court (Exhibit-46).

6 The opponent no.2 Insurance Company examined it's Manager Ranjan Tripathi, who was authorized to adduce evidence. He brought on record the complaint given to the police on 6/5/2016 for making use of a fake policy by the complainants. A postal receipt of the said complaint, the letters given to opponent no.2 were also placed on record to demonstrate that the policy on the basis of which the Insurance Company had the liability to indemnify the insured, was a fake policy. On the contrary, a copy of the policy bearing no.89851376 was placed on

record which was issued to one Pawan Kumar Chaurasia of New Delhi for a two-wheeler and this demonstrated that the policy produced on record by the claimants, was a fake one. Further, opponent no.2 also filed on record the computer print out of the premium register of its Andheri Branch to show that the Insurance Company never received any premium in respect of the fake policy filed by the petitioner.

7 In the backdrop of the material placed before it, the Tribunal proceeded to determine the prime issues i.e. "Whether the death of Balu Borade took place due to rash and negligent driving of Tata Mobile Van No.Mh-06-AG-7204". Another point which arose for determination is "whether the Tata Motor Vehicle was having valid insurance on the date of accident". The first point came to be answered in the affirmative, whereas the second point was answered in the negative.

8 As far as issue no.2 is concerned, it was not in dispute that the offending Tata Mobile van belong to opponent no.1. and the ownership was not in dispute. The dispute was only regarding the cover of insurance policy on the date of accident. The accident occurred on 7/3/2015 and the petitioners had produced on record the policy papers which were objected to but even, the policy filed by the opponent no.1 was not proved.

Recording that there was no evidence on record to show that opponent no.1 had paid the premium and purchased the policy covering the date of accident, the Court also scrutinized the evidence of opponent no.2's witness Ranjan Tripathi. The said witness – Legal Manager of the Insurance Company produced on record the register of premium received by it's branch office, and which did not reflect that any such premium was received by the Company against the policy produced by the applicants. On the other hand, the Insurance Company filed on record the copy of policy (Exhibit-67) bearing the same number, which was reflected on the policy produced by the claimant, and it was submitted before the Tribunal that the policy issued under the said number, pertained to some another vehicle i.e. two wheeler Bajaj Pulsar bike belonging to one Pavan Kumar Chaurasia in New Delhi.

9 It was inferred that the policy issued under the number 89851376 in respect of Tata Mobile van bearing no.MH-06-AG-7204, is not a valid policy and it has no valid insurance covered on the date of the incident. It was, therefore, held that since there was no valid insurance covered for the vehicle on the date of the accident, the other question as to whether there was any terms and conditions of the policy, were not required to be gone into.

10 As far as the first issue is concerned, whether the death of Balu was accidental, the evidence of PW No.1 Bhimarao Borade though not present on the spot of incident and though

another son Somnath was present along with the deceased, but he was not examined, the learned Tribunal placed reliance on the police papers, specifically the complaint (Exhibit-35) as well as the post mortem report, reflecting the cause of death due to cardiac respiratory arrest, due to head injury in road traffic accident.

About the submission that there was acquittal of the driver in a criminal trial, the Tribunal rightly recorded that the standard of proof required in criminal trial, is distinct than the standard of proof required in civil cases, as in the former, the offence has to be proved beyond reasonable doubt, whereas in civil cases, it is sufficient to establish preponderance of probabilities. The acquittal of the driver from a charge of rash and negligent driving, therefore, was held to be not sufficient to absolve the driver of his liability. On the other hand, the Tribunal has recorded as under :-

> "In the present case, it is clear that, even though the opponent No.1 was having driver to depose in the court, regarding the accident, but this driver Deepak Ray is not examined and reliance is placed on acquittal of the driver in criminal case. In such circumstances, the police papers placed on record clearly show that, there was negligence of the driver of the Tata mobile van and, so he was charge sheeted by the police. That might not have been proved beyond reasonable doubt but on the touch stone of preponderance of probability, there is sufficient evidence to show that the driver of Tata mobile van was negligent in

> driving his vehicle and therefore, the death of Balu Borade occurred in the accident. So, answer to issue No. 1 given in the affirmative".

Coming to the question of quantum of compensation, since the deceased was 19 year old, the multiplier of 18 in terms of the decision of *Sarla Verma & Ors vs Delhi Transport Corp.& Anr 2009 SC 3104*, was taken recourse of. The deceased was accepted as a labour and his notional income was taken as Rs.3,000/-, adding the future prospects, the monthly income was calculated as Rs.4,200/-. Since he was a bachelor, 50% of income was deducted towards his personal and living expenses. The loss of estate was awarded a sum of Rs.15,000/-, funeral charges of Rs.15,000/- was also admissible and by calculating the annual income of the deceased as Rs.25,200/-, the claim was granted in the sum of Rs.4,83,600/-.

11 In the wake of the fact that there was no valid insurance policy, the Insurance Company was exonerated, but since the opponent no.1 was the owner of the vehicle, the liability to pay compensation was fastened upon him. The liability of Insurance Company being a contractual liability, and since there was no valid and existing contract between the owner and Insurance Company, the liability was not shifted upon the Insurance Company.

12 On hearing the learned counsel for the appellant i.e. the owner of the vehicle and the counsel for the claimant, I do not find any legal infirmity in affixing the liability to pay compensation upon the party no.1 i.e. the owner of the vehicle, who is vicariously liable for the acts of his driver engaged by him to drive the said vehicle. In absence of a valid and existing insurance policy, to indemnify him, the Insurance Company was absolved of it's liability, which was fastened on the owner of the vehicle, only.

13 Finding no infirmity in the impugned judgment and on not being convinced by the arguments advanced by the learned counsel for the appellant, the Appeal is dismissed.

(SMT. BHARATI DANGRE, J.)