IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO. 1186 OF 2018

H.D.F.C. Ergo General Insurance Co. Ltd.
Erstwhile L & T General Insurance
Company Limited,
Through its Branch Manager,
Jaika Building, 2nd floor Civil Lines,
Commercial Road, Sadar, Nagpur

.... APPELLANT

// **VERSUS //**

1. Ajay S/o Rajesh Hanmalwar
Aged about 23 years, Occu. Education,
R/o Kannamwar, Ward no.10m,
Ballarpur, Tq. Ballarpur, Distt. Chandrapur

2. Shri Chandrakumar Kundandas Lalwani
Aged about Major, Occu. : Owner,
R/o Tirupati Ward, Ballarpur,
Tq. Ballarpur, Distt. Chandrapur

.... RESPONDENTS

WITH

CROSS OBJECTION NO. 103 OF 2018

Ajay Rajesh Hanmalwar,
Aged about 23 years, Occu.- Education,
R/o Kannamwar Ward No.10,
Ballarpur, Tah-Ballarpur
District – Chandrapur

.... CROSS OBJECTOR

//VERSUS//

1. Chandrakumar Kundandas Lalwani,
Aged about major, Occupation-Owner,
R/o Tirupati Ward, Ballarpur,
Tq. Ballarpur, Distt. Chandrapur

2. H.D.F.C. Ergo General Insurance Co. Ltd.
Erstwhile L & T General Insurance
Company Limited,
Through its Branch Manager,
Jaika Building, 2nd floor Civil Lines,
Commercial Road, Sadar, Nagpur,
Tahsil & Distt. Nagpur

.... **RESPONDENTS**

Shri H.N. Verma, Advocate for appellant
Shri Rohit Joshi, Advocate for respondent No.1
Shri D.I. Jain, Advocate for respondent No.2

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 17/02/2022

ORAL JUDGMENT

. This is an appeal under Section 173 of the Motor Vehicles Act, challenging the judgment and award dated 03/04/2017 in M.A.C.P. No. 30/2014. By the impugned judgment, the Claims Tribunal partly allowed the claim petition under Section 166 of the Motor Vehicles Act and directed the Appellant and Respondent No. 2 to pay compensation of Rs.1,00,000/- with interest at the rate of 9% per annum from the date of the petition till final realization.

2. The brief facts necessary to decide this appeal are as under:

The respondent no.1 who shall be hereinafter referred to as claimant, had filed a Claim Petition under Section 166 of the Motor Vehicles Act alleging that on 08/04/2013, he was a pillion rider on a motorcycle driven by his friend Shekhar Ganrat. He claimed that the offending truck bearing no. MH-34-AB-4799, which was owned by Respondent No.2 and insured with the Appellant-Insurance Company, dashed against the motorcycle, as a result he sustained grievous injury. The Claimant has stated that the accident was caused only due to rash and negligent driving by the driver of the offending truck. The claimant has stated that at the relevant time he was 20 years of age and was studying and also doing labour work and earning Rs.3,000/- per month. He has stated that he had incurred medical expense of Rs.1,24,000/-. The Claimant claimed total compensation of Rs.2,94,000/-.

3. The Respondent no.2-Owner of the vehicle denied that the accident was caused due to rash and negligent driving by the driver of the offending truck. He claimed that the vehicle was duly insured during the relevant period. He claimed that two vehicles were involved in the said accident and raised the plea of non-joinder of parties. He further claimed that the offending truck was duly insured with the Appellant-Insurance Company.

4. The Appellant-Insurance Company claimed that the offending vehicle was not duly insured and further claimed that the cheque issued towards payment of premium was dishonoured and that the insured was

already informed that the policy was cancelled. The Appellant-Insurance Company claimed that since the vehicle was not insured, it is not liable to pay any compensation.

5. The Tribunal, upon considering the evidence on record held that the accident was caused due to rash and negligent driving by the offending truck. The Tribunal held that the claimant has failed to prove that he has suffered any permanent disablement on account of the injuries sustained in the accident. Taking into consideration the documentary evidence adduced by the Claimant, the Tribunal awarded compensation of Rs.70,000/- towards medical expenses, Rs.10,000/- towards special diet and transport allowance and Rs.20,000/- towards physical and mental agony. The Tribunal thus awarded total compensation of Rs.1,00,000/- with interest at the rate of 9% per annum. Being aggrieved by the said judgment, the Appellant-Insurance Company has filed the appeal under Section 173 of the Motor Vehicles Act and the Claimant has also filed cross-objection under Order XLI, Rule 22 of the Code of Civil Procedure.

6. Heard Shri H.N. Verma, learned Counsel for the appellant, Shri Rohit Joshi, learned Counsel for the Claimant and Shri D.I. Jain, learned Counsel for the Respondent no.2-owner.

7. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties.

8. Shri Verma, learned Counsel for the Appellant states that the owner had issued a cheque dated 31/03/2013 at (Exh.65) for payment of premium of Rs.2,33,784/-. The said cheque was towards the payment of premium in respect of six policies. The Insurance Company had issued policy which was w.e.f. 03/04/2013 to 02/04/2014. The said cheque was dishonoured under cheque return memo dated 04/04/2013 at Exh. 66. He states that the vehicle had met with an accident on 08/04/2013. The Insurance Company *vide* notice dated 10/04/2013 had cancelled the policy. He, therefore, submits that the Insurance Company, though liable to satisfy the award towards the third party, is entitled to recover the said amount from the insured. In support, he had relied upon the decision of this Court (Coram: Sunil Kotwal, J.) in ***S.B.I. Insurance Company, Aurangabad Vs Madhubala Sanjeev Patil and others 2019 (4) ABR (NOC) 25 (Bom.).***

9. Learned Counsel for the Respondent no.2 has relied upon the decision of the Hon'ble Apex Court in ***United India Insurance Company Ltd. Vs Laxmamma and others 2012 (5) SCC 234*** to contend that the Insurance Company is liable to indemnify third party unless the policy of

insurance is cancelled by the authorized insurer and intimation of such cancellation has reached to insurer before the accident. He submits that there was valid policy and as such the Insurance Company is liable to indemnify the insured.

10. Learned Counsel for the Claimant submits that the compensation awarded by the Tribunal is not just and reasonable. He submits that the claimant had produced documents to prove that the Claimant had incurred expenses of Rs.94,000/- towards medical treatment, hospitalization, transport etc. He further submits that the Claimant had suffered a fracture and he was operated and that the Tribunal has not awarded any compensation for actual loss of income. It is stated that the Claimant had suffered 50% permanent disability and he was entitled for loss of future income.

11. I have perused the record and considered the submissions advanced by learned Counsel for the respective parties. The only question for consideration is whether the compensation awarded by the Claims Tribunal is just and reasonable and whether the Appellant-Insurance Company is entitled to recover the same from the Respondent no.2-owner of the offending vehicle.

12. It is not in dispute that the truck owned by the Respondent no.2 had dashed against the motorcycle bearing no. MH-34-S-9446 on which Claimant was a pillion rider. The Claimant has deposed that he had sustained grievous injury resulting permanent disablement. The Claimant has deposed that he was admitted in the hospital of Dr. Duddalwar from 08/04/2013 to 17/04/2013. He has deposed that even after the discharge, he had to go to the hospital for follow up the treatment, for which he had to spend Rs.9,000/- as travelling expense. He has deposed that he was unable to do his day to day activities because of the injuries sustained in the accident and hence had to engage an attendant on payment of Rs.20,000/-. The Claimant had stated that he had incurred medical expense to the tune of Rs.1,25,000/- and expense of Rs.20,000/- towards special diet. The Claimant had further stated that he had to incur further medical expense of Rs.30,000/- for removal of rod. The Claimant also claimed compensation of Rs.50,000/- for loss of marriage prospects and amenities of life and further Rs.50,000/- towards loss of future income.

13. The Claimant has placed on record medical bills at Exhs.34 to 78 which indicate that the Claimant had incurred total expenses of Rs.69,943/- towards medical expenses.

14. The Tribunal has awarded compensation of Rs.70,000/- towards medical expenses, Rs.10,000/- towards special diet and taxi, 20,000/- towards physical and mental pain. It is to be noted that the amount awarded towards transport allowance is very meager.

15. It is to be noted that though the Claimant has stated that he has suffered permanent disablement there is absolutely no evidence to prove that the injuries sustained in the accident resulted in permanent disablement. The Claimant is therefore not entitled for any compensation towards future loss of income. The Tribunal has already awarded compensation of Rs.1,00,000/-. In my considered view, the Claimant is entitled for additional compensation of Rs.10,000/- towards the transport allowance and considering the nature of the injuries, an additional amount of Rs.20,000/- towards physical and mental pain. The Claimant is therefore entitled to compensation of Rs.1,30,000/-.

16. It may be mentioned that the Claimant had restricted their claim at Rs.1,00,000/-. The Claimant has filed cross objection to enhance the compensation. However, considering the decisions of the Hon'ble Apex Court in ***United India Insurance Co. Ltd. V. Nagappa*** reported in ***2012 SCC Online Kar 1255,*** as well as in ***Surekha and Ors. Vs Santosh and Ors.*** reported in ***2020 ACJ 2156***, the Tribunal as well as this Court is

under an obligation to award just and reasonable compensation even in the absence of cross objection. Hence, the Claimant is entitled for total compensation of Rs. 1,30,000/-. The accident was of the year 2013. The prevailing rate of interest was 6% to 7% per annum. Hence, the said amount shall carry interest at the rate of 7% per annum from the date of petition till final payment.

17. The next question is whether the Appellant-Insurance Company is liable to pay the said amount to the claimant and recover the same from the Respondent no.2 – owner. The evidence on record reveals that the policy was issued on 03/04/2013, and it was valid till 02/04/2014. It is not in dispute that the owner had issued a cheque dated 31/03/2013 at Exh.65 towards payment of premium in respect of the policy in question. The cheque return memo at Exh.66 reveals that the cheque was dishonoured for insufficient funds. The vehicle was involved in an accident on 08/04/2013 and the Insurance Company had cancelled the polity after the accident.

18. In the case of ***Laxmamma and others (supra)***, the Apex Court has considered the question whether the insurance company is absolved of its liability to pay the compensation to the third party under the policy of insurance because of dishonour of cheque and cancellation of policy

subsequent to the accident. The Apex Court after considering the previous decision has held as under:

> *"26. In our view, the legal position is this :where the policy of insurance is issued by an authorized insurer or receipt of cheque towards the payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to the indemnfy third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance companies liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."*

19. The facts before the Hon'ble Apex Court were similar to the facts of the present case. In the said case, the Hon'ble Apex Court has held that the Appellant-Insurance Company is liable to indemnify the third party and liberty was granted to the insurer to prosecute its remedy to recover the amount paid to the claimants from the insured. The learned Single Judge of this Court (Coram :Sunil Kotwal, J.) has considered the said decision as well as the other decision of the Hon'ble Apex Court on

the said issue and held that the Insurance Company is liable to indemnify the third party and then to recover the amount from the insured. In view of the said decisions, in my considered view, the Insurance-Company cannot be totally absolved of its liability to indemnify the third party. However, the Insurance Company is always at liberty to recover the amount paid to the Claimants from the owner of the offending vehicle.

20. Under these circumstances and in view of the discussion supra, the appeal is partly allowed. It is held that the Claimant is entitled for compensation of Rs.1,30,000/- with interest at the rate of 7% per annum from the date of the petition till final realization.

21. The Appellant-Insurance Company to pay the said amount to the Claimant with liberty to recover the same from the Respondent no.2-owner of the offending vehicle. The Respondent no. 1 -Claimant is permitted to withdraw compensation of Rs.1,30,000/- with proportionate interest accrued thereon. The Claimant to pay the deficit court fees on the enhanced compensation.

22. The appeal as well as cross-objection stand disposed of in above terms. Pending applications, if any, stand disposed of.

JUDGE

Signed By:JAYASHREE SHARAD SHINGNE

Jayashree..

Signing Date:25.02.2022 18:54