IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.90 OF 2021

Reliance General Insurance Company Limited, Mumbai. … Appellant

V/s.

Tejashree Ganesh Mamidala and Ors … Respondents

Mr. Pandit Kasar for the appellant.
Ms. Varsha Chavan for respondent Nos. 1 to 3.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 16, 2023

P.C.:

1. The Insurance Company has challenged the Judgment and Award dated 3rd March, 2020 passed by the Member, Court Room No.6, Motor Accident Claims Tribunal, Mumbai directing the opposite party and insurance company to pay jointly and severally an amount of Rs.47,96,020/-(Forty Seven Lakh Ninety Six Thousand Twenty Only) along with interest @ 7.5% per annum from the date of application till its realisation.

2. The respondent Nos.1 to 3 are claimants who had filed an application seeking compensation under Section 166 of the Motor Vehicles Act, 1988 against the owner and insurer seeking compensation of amount of Rs. 1,00,00,000/- (One Crore Only).

3. The claim of the claimants in brief is as under. On 15th August, 2016 at about 22:00 hrs the deceased was riding Activa Motorcycle on the road opposite Shivsiddhi Society, Sayani road, Prabhadevi, Mumbai. At that time, offending motorcycle came at excessive speed and while driving the vehicle in rash and negligent manner, dashed the motorcycle of the deceased, resulting in serious injuries. During the treatment, the predecessor of claimants died. Undisputedly, the claimants are the legal representatives of the deceased. According to the claimants, the income of the deceased on the date of accident was around Rs.5,00,000/- (Five Lakh Only) per annum.

4. The opposite party failed to appear before the Tribunal and, therefore, the application proceeded ex parte against them.

5. The appellant (Insurer) appeared in the said claim petition. It filed application under Section 170 of the Motor Vehicles Act, 1988. The said application was allowed. The Insurance company raise Two (2) defences.

a) The rider of the vehicle did not possess valid and effective driving license on the date of accident; and

b) There was contributory negligence on the part of the deceased.

6. Based on the defence of the insurer, the Tribunal framed four issues. The burden to prove validity of the driving license was on insurer. The burden to prove that the deceased contributed in the accident was also placed on the insurer.

7. The Tribunal while considering issue Nos.1 to 3 relied on the evidence of the witnesses of the incident who had been examined by the insurance company. In his evidence, he stated that he was not aware who was at fault at the time of accident. Considering the evidence adduced by the insurance company, Tribunal recorded a finding of fact that the insurer failed to prove as to how deceased was at fault at the time of accident. The Tribunal, therefore, answered issue No.3 in favour of the claimant holding that insurer failed to prove that the deceased had contributed some part in accident resulting in his death.

8. In relation to issue No.2, the burden to prove the validity and effective license on the date of accident. DW-2 was examined by the insurer deposed that the deceased was holding learning license at the time of accident. In his cross-examination, he stated that the deceased obtained permanent driving license from the concerned authority. The Tribunal based on material on record recorded a finding that the insurer had not produced copy of the learning license. No material was produced by the insurer to show that the permanent driving license was obtained after the date of accident. The Tribunal relying on the evidence recorded a finding that the insurer failed to prove that the deceased was not holding valid and effective license at the time of accident.

9. Learned advocate for the appellant submitted that the Tribunal could not have directed the appellant Company as the accident involved two vehicles and the claimant ought to have been made both the insurance company party to the claim petition. The point raised by the Insurance Company being mixed question of law and facts, it was necessary for the appellant to raise such plea before the Tribunal, so that the claimant had the opportunity to meet such case. In absence of such plea being raised before the Tribunal, it is not open to the insurance company to raise such a plea before this Court. Taking into consideration the above factors, in my view, the Tribunal was justified in directing the opposite party and insurer to jointly pay the compensation to the claimant.

10. No other point is urged. The appeal, therefore, stands dismissed.

11. No costs.

12. The amount deposited by the Insurance Company be permitted to be withdrawn by the claimants as directed by the Motor Accident Claims Tribunal, Mumbai.

(AMIT BORKAR, J.)