IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.435 OF 2021

IFFCO Tokio General Insurance
Company Ltd. Mumbai ...Appellant
V/s.
Sindhu V. Tiwari And Anr. ...Respondents

WITH
INTERIM APPLICATION NO.30259 OF 2022
IN
FIRST APPEAL NO.435 OF 2021

Sindhu V. Tiwari And Anr. ...Applicant
In the matter between :-
IFFCO Tokio General Insurance
Company Ltd. Mumbai ...Appellants
V/s.
Sindhu V. Tiwari And Anr. ...Respondents

Mr. Pramod Purav a/w. Mr. Niketan Makhawa for Applicant/Respondents.
Mr. Sarthak S. Diwan for Appellant.

CORAM : AMIT BORKAR, J.
DATE : JANUARY 17, 2023

P.C.:

1. The insurance company has filed this appeal challenging the judgment and award dated 5th March 2021, passed by the learned member MACT, Mumbai, claim petition bearing MACP no.1802 of 2016.

2. The respondent no.1 had filed claim application under Section 166 of the Motor Vehicles Act, 1988 on the ground of having suffered permanent disability in the road accident. It is alleged that the accident took place on 25th August 2016 at about 2.00 p.m., while the claimant was crossing LBS Road, at Sanghani Junction Signal, Ghatkopar (West), Mumbai after taking necessary care. The offending motorcycle came at high speed and dashed the claimant. The motorcycle rider did not blow horn and maintained his speed in rash and negligent manner. The heavy dash of motorcycle resulted in fracture on right humerus of the claimant. She was admitted as an indoor patient from 26th August 2016 to 1st September 2016. On the date of accident, she was 38 year old and was earning Rs.5,000/- per month in a private job. According to the claimant, the earning capacity has adversely affected due to the accident.

3. The owner though served failed to remain present and the claim petition proceeded ex-parte against him.

4. The appellant-insurance company contested the claim by raising two defences:-

(i). The motorcycle rider was not having valid and effective motor vehicle license;

(ii). The claimant was solely responsible for the accident as she was carelessly crossing busy road;

5. Issue no.3 was in respect of valid driving license on the date of accident. According to the insurance company, the owner committed breach of terms of policy by handing over vehicle to one Shahnawaz Khan, who was not holding license on the date of incident. In support of such defence, the insurance company examined the investigator.

6. It is stated on oath that the driver was not having driving license on the date of accident. However, investigator produced on record copy of driving license at Exhibit-37-A.

7. The Tribunal after taking into consideration driving license of the driver dated 20th December 2016 recorded a finding that the tenure of learning license is of six (6) months, and therefore, considering the gap of four (4) months from the date of accident, till the date of issuance of license, it is not possible for the driver to obtain learning license and, hence, the Tribunal recorded a finding that on the date of accident, the driver was having valid license.

8. Learned advocate for the insurance company submitted that the said finding is perverse, as such inference could not have been drawn without there being material on record.

9. In my opinion, since the driving license dated 20th December 2016 having been produced by the investigator, the Tribunal was justified in holding that it is not possible for the driver to get learners license to get within four (4) months and permanent license granted on 20th December 2016, is for renewal of earlier permanent license.

10. Relying on the charge-sheet, it is submitted that the driver was not holding learning license on the date of accident. Such reliance on charge-sheet is of no use to the insurance company as there is no conclusive evidence by the insurance company that the driver was not holding permanent license on the date of accident. The Tribunal, based on the material on record and based on the findings and based on the evidence produced by the insurance company, recorded a finding that the driver was holding valid license on the date of accident. The appeal of insurance company need not be entertained.

11. The appeal is, therefore, dismissed. No costs.

12. Interim application no.30259 of 2022 is allowed.

13. Claimant is allowed to withdraw amount deposited before the Tribunal alongwith accrued interest;

14. In view of dismissal of appeal, interim application no.3190 of 2021 does not survive, it is disposed of as infructuous.

(AMIT BORKAR, J.)