IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 490 OF 1999

The Oriental Insurance Co. Ltd. above State Bank of India Naupada, Thane	)))	 ….Petitioner (Orig. O. P. No. 4)
Versus		
1. Abdul Hakim Abdul Karim Shaikh Age- about 39 years, Occ: Fruit seller, R/o. 76, Kasaiwadi, Zopadpatti near Arabic School, Bhivandi - 321302, Dist. Thane	)))))	....Resp. No. 1. ....(Orig. Claimant No.1)
2. Bharatkumar M. Sanghavi, R/o. - 10, Pandvati Bldg., Ganesh Gawade Road, Mulund, Bombay - 400 080.	))))	 ....Resp. No. 2 (Orig. O. P. No.1)
(Matter is dismissed against Respondent No. 2 as per Judicial Registrar-II Order dated 16/01/2003)	**))))**	
3. Abdul Halem Lukhman, R/o. - 4th Nizamapura H. No. 21, at Post Bhiwandi, Tal. Bhiwandi	)))	 ...Resp. No.3 (Orig. O. P. No.2)
5. New India Assurance Company Ltd Thane Division, Naupada, Thane)	))	 ...Resp. No. 4 (Orig. O. P. No.3)

Ms. Poonam Mital for the Appellant

Mr. Akshay Kandurkar i/b Rajesh S. Datar for the Respondent No. 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st MARCH 2023.

<u>JUDGMENT :</u>

1. The issue involved in this appeal is at the time of accident offending vehicle was not covered with insurance policy of the appellant.

2. It is contention of learned counsel for the appellant that accident occurred on 30 December, 1987 at that time the offending Rickshaw in which deceased was travelling was not insured with appellant/insurance company this fact was raised before the Tribunal. But, it was not considered and the tribunal has fixed 30% contributory negligence on rickshaw and 70% on respondent no. 4. Learned counsel further submits that the said accident was occurred due to sole negligence of driver of offending tanker but tribunal has not considered this fact and wrongly fixed 30% liability on driver of

offending rickshaw. Which is not proper.

3. It is contention of learned counsel for the respondent/claimant that the claimant was travelling in said rickshaw as passenger, it was proved before the tribunal said rickshaw as insured with appellant/insurance company. Hence requested to dismiss the appeal.

4. I have heard both learned counsel perused judgment and order passed by Motor Accident Claims Tribunal (for short 'the tribunal').

5. It is contention of learned counsel for the appellant that at the time of accident the Auto rickshaw in which deceased was traveling was not covered under insurance policy of appellant's/insurance company. The claimant's have examined PW-3 witness Baliram Kamble from RTO Office, Thane at Exhibit- '61'. He has stated that the Auto rickshaw was insured with the appellant/insurance company and the insurance was valid for period 27/11/1987 to 29/11/1988. He further stated that the cover note

number was 168182. The accident occurred on 30/12/1987. While dealing with this issue, the tribunal has observed that the appellant examined the witness Mrs. Ananta Laxmi Murti to substantiate with the contention that the said vehicle was not insured with the appellant/insurance company on 30/12/1987, and that the said no. 168182 is not of the said company etc. But the fact is that this witness in cross examination states that the said insurance company has appointed the investigator in the matter. But no notice was issued to the owner of the rickshaw. No letter was written to the R.T.O. She further states that after the 01/08/1988 the development officer can issue the cover note, Mr. Yevrgal was the development officer. He is service of the insurance company, at present he is in working in Thane Division. While dealing with the evidence, the tribunal has observed that it is very difficult to accept that the cover note is not issued by the said office of insurance company. The tribunal further observed that the witness has stated that as per the register, it appears that the said cover note is given to the Development Officer on 01/08/1988, and the said cover note is not given by the officer prior to 01/08/1988. But this witness stated in cross examination that except the produced documents there is no document to show that the policy was handed to development officer as alleged on 01/08/1988. The number mentioned by R.T.O. Officer about covering note includes in the cover note number given by her office in respect of the said vehicle. The said witness further states that she has no personal knowledge about the said policy. Considering the evidence of this witness. The tribunal has observed that it is very difficult to accept the contention of insurance company/appellant that the said rickshaw was not insured with the appellant/insurance company. I do not find any infirmity in it. In my view the witness Baliram Kamble, who was working in R.T.O. Office Thane has stated that from their office record it appears that rickshaw was insured with the appellant/insurance company, when accident was occurred. Moreover, the appellant did not examine Development Officer in support of their case, to prove that no insurance policy was issued. Though, he was working at Thane. Considering above reasons Appeal is devoid of merit and I pass following order.

ORDER

i. Appeal is dismissed. No order as to cost.

ii. The claimant are permitted to withdraw the deposited amount along with accrued interest thereon.

iii. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

iv. The learned counsel for the appellant under take to file Vakalatnama on behalf of appellant.

(SHIVKUMAR DIGE, J.)