IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1398 OF 2017
WITH
CIVIL APPLICATION NO. 3721 OF 2019
IN FA/1398/2017

Reliance General Insurance Company,
Through its Manager,
R/o Reliance General Insurance Company,
Adalat road, Aurangabad ... Appellant
(Org. Resp. No.2)

Versus

1] Shri. Khandu Shankar Lalge,
Age 52 years, Occ. Service,
R/o Nighoj, Tal. Parner,
Dist. Ahmednagar ... Org Claimant

2] Shri. Bandu Rambhau Tagad
Age 43 Yrs, Occu. Agriculturist
R/o Shirapur, Tal. Ashti,
Dist. Beed ... Org Rep No.1
...Respondents

...

Mr. Rohit H. Dahat, Advocate for Appellant
Mr. Shubham Jaybhar, Advocate h/f Mr. D.R. Jayabhar, Advocate for Respondent No.1
Mr. S.P. Salgar, Advocate h/f Mr. L.R. Tade, Advocate for Respondent No.2

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 23rd SEPTEMBER, 2024

ORAL JUDGMENT :

1. This appeal filed by the Insurance Company challenges the judgment and award dated 06/12/2016, passed by the Motor Accident Claims Tribunal, Ahmednagar, in M.A.C.P. No.204/2008.

2. Admitted facts can be stated thus:

On 03/11/2007 respondent No.1/claimant was proceeding on motorcycle bearing No.MH-16-S-487 towards Nighoj via Ahmednagar, along with Ashok Tatyaba Ghodke being pillion rider. When they reached near the village Dashmi Gavhan, one new motorcycle Splendor Plus bearing Chasis No.07K16F30621 and Engine No.07K15E70915 came on the wrong side from opposite direction in rash and negligent manner and since driver of the said motorcycle could not control the speed, he gave dash to the claimant’s motorcycle. Claimant sustained grievous injuries on his chest, head, hands and legs. Claimant, therefore, filed claim for compensation of Rs.23,00,000/- contending that at the time of accident he was serving as Branch Manager in Central Bank of India at Chichondi Patil Branch and was getting salary of Rs.26,200/- and that he has suffered 70% permanent disability.

3. Appellant/Insurance Company opposed the claim by filing written statement and denied that the driver of offending motorcycle was driving the vehicle in rash and negligent manner. A defence is also raised that driver of offending motorcycle was not holding valid and effective driving licence to drive the same and hence, there is breach of terms and conditions of the insurance policy. Therefore, Insurance Company is not liable to pay the compensation, if any.

4. Tribunal after recording the evidence and hearing the parties, partly allowed the claim and directed the owner of offending

vehicle and Insurance Company to jointly and severally pay the compensation of Rs.6,04,200/- along with interest @ 9% per annum to claimant. Insurance Company is directed to pay the compensation and recover it from the owner of the offending vehicle. Insurance Company is aggrieved by the said decision.

5. Heard learned advocate for appellant/Insurance Company, learned advocate for respondent No.1/claimant and learned advocate for respondent No.2/owner of offending vehicle.

6. Learned advocate for appellant/Insurance Company assailed the finding recorded by Tribunal that Insurance Company has not taken a pleading that licence of the driver of offending vehicle was fake. By relying on the report of the insurance investigator at Exhibit-48, he submits that the licence number of driver of offending vehicle did not match with the number of licence produced by him. Therefore, the licence of driver of the offending vehicle ought to have been treated as fake. He, therefore, submits that since there is clear-cut breach of terms and conditions of insurance policy, Tribunal ought to have directed Insurance Company to pay the compensation and recover it from the driver of offending vehicle.

7. Learned advocate for claimant supported the impugned judgment and award and by relying on ***Singh Ram Vs. Nirmala***

and Others, AIR 2018 SC 1290, he submits that Tribunal is justified in directing Insurance Company to pay the compensation and recover it from the driver of offending motorcycle.

8. Learned advocate representing the owner of offending motorcycle vehemently submits that the Tribunal has erred in observing that the licence was mismatched and directing Insurance Company to pay the compensation and recover it from him.

9. Heard learned advocate for appellant, learned advocate for respondent No.1 and learned advocate for respondent No.2 at length. Perused the record.

10. Admittedly, the Insurance Company has failed to examine any R.T.O. officer in support of its contention that licence produced by respondent No.2 was fake or the same was not issued by the R.T.O. Reliance placed by Insurance Company on the insurance investigator’s report is accepted by the Tribunal and the Tribunal has rightly directed Insurance Company that, since there is breach of terms and conditions of Insurance Police, Insurance Company shall first pay the compensation and recover the same from second respondent. Fact remains that second respondent has not preferred any appeal challenging the directions given by the Tribunal to Insurance Company to pay the compensation and recover it from him.

11. In ***Singh Ram*** (supra), in similar facts, the Apex Court has held that, even if the licence issued to the driver of offending vehicle was invalid, Insurance Company is liable to pay the compensation and recover it from owner-cum-driver of the offending vehicle. This decision is squarely applicable to the facts of the present case and the impugned judgment and award passed by the Tribunal is in consonance with this settled legal position.

12. No fault can be found with the direction given by the Tribunal to Insurance Company to pay the compensation and recover the same from second respondent. First appeal being devoid of merit is dismissed.

13. In view of dismissal of first appeal, the civil application is allowed. Claimant is entitled to withdraw the compensation amount along with accrued interest.

(NITIN B. SURYAWANSHI, J.)