2024:BHC-AUG:14086

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

16 FIRST APPEAL NO. 77 OF 2024

SARITA MUNJAJI KURHE AND ORS
VERSUS
SANTOSH BALASAHEB KURHE AND ORS
...
Advocate for Appellant : Mr. P.S. Agrawal
Advocate for Respondent 2 : Mr. Abhijit Choudhari
...

CORAM : KISHORE C. SANT, J.
Dated : July 10, 2024

PER COURT :-

1. Heard the parties. R. & P. is received and seen by this Court.

2. A short question that needs to be determined in this appeal is, 'Whether the claim petition needs to be remanded for afresh trial?'. The main ground taken the appeal is that the learned Motor Accident Claims Tribunal, Parbhani has dismissed the claim petition only on the ground that the deceased died in an accident when he was riding the motorcycle borrowed from his brother and thus has stepped in to the shoes of the owner and therefore, the claimants/appellants would not be entitled to get any compensation.

3. The learned advocate for the appellants vehemently argued that since the learned Member of the Tribunal has not gone in to any of the aspects, this appeal needs to be allowed and direction needs be given to the learned Member of the Tribunal to decide the claim petition bearing MACP No. 340/2016 afresh. He pointed out the observations from para No. 18. The

conclusion and findings recorded by the Tribunal in para 18 are as under :-

> 18- In case of **National Insurance Co. Vs. Seems Ramdas and Sangeeta Vs. Jivan (supra)**, the Hon'ble Bombay High Court discussed about the breach of policy. Said issue is not before this Court. Hence, above authorities are not applicable. In case of **New India Assurance Co. Ltd. Vs. Umesh Kumari (supra)** Hon'ble Chandigarh High Court granted the compensation to the driver under the head of premium paid owner-cum-driver. But in case of **Bajaj Allianz General Insurance Co. Ltd. Vs. Ashabai (supra)** and **Bharti AxA General Insurance Co. Ltd. Vs. Shradha Katruwar (supra)**, the Hon'ble Bombay High Court in 2017 did not grant compensation under said head, and therefore, the petitioners are not entitled to get compensation as the deceased steps into the shoes of owner and cannot be treated as third party. Hence, issue No. 3 answered in the negative."

4. The learned Member, while considering various judgments concluded that the claimants are not entitled to get compensation as the deceased steps in to the shoes of owner and therefore, cannot be treated as third party. The learned advocate further argued that if the deceased is taken to have steps in to shoes of the owner, then atleast claimants should have granted compensation considering that Rs. 50/- premium is charged towards driver/owner. The learned Member has not considered this aspect. If it is held that the deceased was owner, then naturally the compensation being owner ought to have been granted. If not then claimants should have been treated as third party and the claim could have been decided on that basis. All these things are not done by the learned Member of the Tribunal, Parbhani.

5. Mr. S.B. Choudhary, learned counsel vehemently opposes the appeal stating that insurance is a matter of contract. The contract is necessarily

governed by the terms and conditions in the contract. In this case, the deceased cannot be said to be third party. The Court has rightly held that the claimants steps into the shoes of the owner and in such case, at the most the claimant should be entitled to receive Rs. 1,00,000/- as per the contract.

6. The parties have relied upon the judgments in the case of **Ramkhiladi & Anr. Vs. The United India Insurance Company & Anr.** in **Civil Appeal No. 9393/2019 decided on 7th January 2020** of Hon'ble Supreme Court and in the case of **Urmila Halder Vs. New India Assurance Co. Ltd. & Ors.** in FMA No. 446 of 2010 of the Calcutta High Court. In the said judgments the issue, whether the deceased who happens to be owner of the vehicle died in an accident and in such case whether the claimants/defendants should be entitled to Rs. 1,00,000/- as per the terms of the contract or Rs. 5,00,000/- in view of the amendment and in view of the notification dated 22.5.2018 wherein the amount is enhanced to Rs. 5,00,000/- is considered and the further question that needs to be considered in this case is that whether that is applicable in the present case. It was held that the effect of notification would be on the pending proceeding irrespective of the date of accident. The other judgment relied upon is in the case of **Oriental Insurance Co. Ltd. Vs. Suresh Sidheshwar Badwaik and Ors.** decided by this Court at Nagpur Bench reported in DLD (Civil)- 2023-2230.

7. In view of this, this court finds that it was necessary for the learned Member, MACT, Parbhani to consider the claim petition on all the aspects. Certainly the court has failed to consider that if the deceased is taken to be

owner of the vehicle, then atleast claimants should have been held entitled to receive the amount as per the contract. It is further question of interpretation of notification dated 18.5.2022 under section 163-A of the Motor Vehicle Act, wherein the amount of compensation is enhanced from Rs. 1,00,000/- to Rs. 5,00,000/- and thus, the Tribunal needs to consider all the above questions.

8. With this, the appeal is partly allowed. The claim petition is remanded to the learned Member, Motor Accidents Claims Tribunal, Parbhani for afresh decision on merits. All the observations made above are not to be considered as observations on merits.

(KISHORE C. SANT, J.)

ssc/