



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1255 OF 2017

The New India Assurance Company Ltd.

.. Appellant

Versus

Pramod s/o Pundlik Chavan & others

.. Respondents

Mr. M. M. Ambhore, Advocate for the appellant.

Mr. D. B. Pawar, Advocate for respondents No. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 17th JANUARY, 2024.

PER COURT :

1. By consent of learned counsel for both sides, heard finally at admission stage.

2. This appeal takes exception to the judgment and award dated 16th December, 2015 passed in MACP No. 355/2011.

3. The facts which led to filing of present appeal can be narrated in short as under :-

On 15th February, 2011, deceased was returning on motorcycle bearing registration No. Mh 20 BD 7220 as a pillion rider. There was an accident between the motorcycle and a pick up van

bearing registration No. MH 20 AA 9769 owned by respondent No. 2 and insured with respondent No. 1. In the said accident, deceased sustained grievous injuries and ultimately succumbed to the same. The learned Tribunal, after considering pleadings and evidence on record, passed impugned judgment and award.

4. Appellant is insurance company and appeal is mainly filed with the contention that the Tribunal has committed error in not passing order of pay and recovery of amount of compensation from the owner. Learned counsel for appellant submits that the driver of the offending vehicle was holding licence to drive light motor vehicle and not transport vehicle. According to him, the vehicle involved in the accident is pick up van used for transportation of commercial goods. Learned counsel for claimants opposed the said contention by placing reliance on evidence adduced before the Tribunal and observations made by the Tribunal.

5. Perusal of record indicates that Exhibit 34 relied upon by the insurer shows the nature of offending vehicle to be light motor vehicle. As rightly observed by the Tribunal that there is nothing in Exhibit 34 to indicate that it is a transport or non-transport vehicle.

Thus, the insurer could not prove that the offending vehicle is transport vehicle. Further, evidence placed on record by the claimants as well as insurer indicates that the driver of the pick up van was holding valid and effective licence for the period from 29.07.2009 to 28.07.2029. He was holding licence of driving light motor vehicle. In the absence of any proof of offending vehicle being transport vehicle, the contention of insurer cannot be accepted. This Court finds no substance in the appeal. Hence, appeal stands dismissed.

(R. M. JOSHI)
Judge

dyb