IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

915 FIRST APPEAL NO. 3680 OF 2019

M/s Shriram General Insurance Co. ....Appellant

VERSUS

Meenabai Balaji Bhagure & another .....Respondents

.....

Mr. A. P. Basarkar, Advocate holding for Mr. V. N. Upadhye, Advocate for Appellant
Mr. A. D. Sonkawade, Advocate for respondent No. 1.

CORAM : R. M. JOSHI, J.
DATE : 2nd FEBRUARY, 2024.

PER COURT :

1. This appeal is filed under Section 173 of Motor Vehicles Act preferred by the insurer against judgment and award dated 29th July, 2019 passed in MACP No. 252/2014.

2. A very short issue involved in the present appeal is as to whether the Tribunal has committed error in fastening liability of payment of compensation on insurer in absence of any conclusive evidence indicating involvement of offending vehicle i.e. tempo bearing registration No. MH 04 CP 9017 in the accident in question.

3. Learned counsel for insurer relying upon the evidence on record submits that admittedly, there is delay of about 18 days in lodging First Information Report. It is his contention that when such delay is caused, the Court has to insist upon the claimant to prove occurrence and involvement of offending vehicle in such accident. It is his contention that except for statement of one witness recorded under Section 161 of Code of Criminal Procedure during the course of investigation of the crime, there is no statement of any other person who has witnessed the accident. By referring to said statement, it is argued that the said witness in her statement has disclosed that the colour of the offending vehicle was brown whereas registration record indicates that the vehicle's colour is gray. Thus, according to him, evidence led by claimant is not sufficient to prove involvement of the offending vehicle in the accident in question. Thus, the liability of the insurer ought to have been absolved by the Tribunal. In support of his submissions, he placed reliance on following judgments of this Court :

i) M/s Shriram Insurance Company Ltd. vs. Vanita

ii) M/s Shriram General Insurance Company Ltd. Vs. Tilottam Sandip Sonawane & others
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4. Learned counsel for claimant opposed the said contention by drawing attention of the Court to the evidence of claimant who has sustained injuries and obviously has witnessed the accident. It is his submission that there is corroborating evidence to indicate that claimant was taken to hospital immediately where history was given of road traffic accident. Thus, this is not a case that fabrication of report is there showing road traffic accident. It is his submission that in the judgments relied upon by learned counsel for insurer in this case, none of the witnesses to the accident was examined and in that circumstances, the Court has refused to accept veracity of First Information Report. To support his submissions, he placed reliance on judgment of Hon'ble Apex Court in case of Ravi vs. Badrinarayan and others, **(2011) 4 Supreme Court Cases 693**.

5. There is no dispute about the fact that on 27th August, 2014, claimant was given dash by a motor vehicle resulting into causing of serious injuries to her. There is evidence indicating that she was taken to hospital and the history recorded at the time of her admission is of road traffic accident. Claimant examined herself and has narrated the manner in which the accident has occurred. Insurer is raising objection with regard to lodging of First Information Report

on the ground that it has been lodged after about 18 days. In this regard, it is pertinent to note that during cross examination of the claimant she has stated about she being in unconscious state for about 18 days. There is no evidence to indicate contrary. Having regard to this evidence of the claimant, delay in lodging First Information Report is explained satisfactorily. It is settled law that merely because delay is caused that itself will not become a ground for refusal of the claim. Thus, this Court finds that it is not a case wherein delay has been caused in order to create record. Moreover, there is nothing on record to indicate any reason for falsely involving offending vehicle in the accident in question.

6. It is also pertinent to note that owner of the vehicle has failed to contest the claim. There is no denial of the owner and driver of the vehicle about the vehicle in question being not involved in the crime. Even if owner has failed to contest the claim, it was open for the insurer to examine the owner in order to bring the said fact on record. Admittedly, no evidence is led by insurer. In the aforesaid circumstances, there is no rebuttal on the part of the insurer about the evidence led by claimant showing involvement of offending vehicle

in this accident. As such, no case is made out for causing interference in the findings recorded by Tribunal.

7. In the result, appeal stands dismissed. Amount deposited by insurer/appellant is allowed to be withdrawn by respondents with accrued interest, if any.

8. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb