IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

FIRST APPEAL NO. 526 OF 2024

Sou. Chaya Pandurang Chavan And Anr. ....Appellants
V/S
1. Pandurang Doulu Chavan
3. Bajaj Allianz General Insurance Co. Ltd. ....Respondents

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Mr. Akshay A. Kulkarni a/w. Mr. Avesh A. Ghadge for the Appellants.
Mr. Sarthak S Diwan for the Respondent No. 3-Insurance Company (through VC)

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CORAM : M. M. SATHAYE, J.

DATED : 19 SEPTEMBER 2024

P.C.:

1. Heard learned Counsel for the Appellants/Claimants and learned Counsel for the Respondent No. 3-Insurance Company who waives service. The Respondent No. 1/Owner is duly served but nobody appears for him. The Respondent No. 2 (other Insurance Company) is already deleted from the array of parties, both in Tribunal as well as this Court. The matter is taken up for final disposal by the consent of learned Counsel present.

2. This is an Appeal by the Claimants u/s. 173 of the Motor Vehicles Act, 1988 ("the said Act" for short) challenging the impugned judgment and award dated 3 January 2018 passed by the Member, Motor Accident Claims Tribunal, Kolhapur in M.A.C.P. No. 430 of 2013. By the impugned judgment

and award, the claim is dismissed completely.

3. The claim is filed u/s.163A of the said Act for compensation for the death of the deceased–Vinayak who met with an accident on 17 March 2013. Deceased died during the treatment of the injuries suffered during the accident. The Appellants-Claimants are mother and sister of the deceased. The Respondent No. 1 is the father of the deceased who was the owner of the offending vehicle being motorcycle bearing no. MH.09/CR.9109.

4. Learned Counsel for the Appellants/Claimants invited this Court's attention to the issues framed and contended that the claim is dismissed mainly on the ground that deceased – Vinayak, who was driving the motorcycle was not the owner and therefore, he cannot be treated as 3rd party or registered owner so as to claim compensation under the insurance contract. In this respect, learned Counsel for the Appellants relied upon the subject matter policy dated 5 November 2012 which shows that separate premium has been paid under the head 'PA Cover for Owner-Driver'. He submits that in that view of the matter the deceased – Vinayak can be considered as stepping into the shoes of owner or a driver for whom separate premium is paid.

5. Learned Counsel for the Respondent No. 3-Insurance Company submitted that involvement of the motorcycle itself is under dispute. He,

however, fairly submitted that the aspect of 'PA Cover for Owner-Driver' being paid has not been considered by the Tribunal at all and cannot be considered for the first time in the present Appeal, without any opportunity being afforded to either side to argue rival claims. The said position is fairly accepted by learned Counsel for the Appellants also.

6. It appears from the impugned judgment that the claim was heard when time was sought on behalf of the Claimants. No doubt it is also recorded that the Claimants had taken time on several occasions before that. Indeed, the only reason for dismissal of claim appears to be that deceased was not treated as third party or owner as indicated above. Considering the limited scope of controversy and circumstances in which the claim has been dismissed, in my view it would be in the interest of justice to remand the matter to the concerned Tribunal for consideration afresh on merits including the contention raised by the Appellants about payment of separate premium under PA Cover for Owner-Driver.

7. Learned Counsel for the Appellants-Claimants on instructions, have stated that the Claimants are ready to forgo the interest component on the compensation that will be decided, after the trial, from the date of the impugned order (3 January 2018) till today when the Appeal is being disposed of, considering that the Appeal was filed belatedly and delay was

condoned by this Court and the matter has remained pending for longtime. The statement is accepted.

8. In light thereof, the Appeal is disposed of by passing the following order:

(a) The impugned judgment and award dated 3 January 2018 is quashed and set aside. The Motor Accident Claim Petition No. 430 of 2013 is restored to the file for hearing on merits afresh.

(b) The parties are at liberty to lead evidence in support of their rival claims.

(c) All the contentions of the parties on merits are kept open including the contention of the Respondent No. 3-Insurance Company that the concerned motorcycle was not involved in the accident.

(d) Needless to mention that the claim will be decided on its own merits in accordance with law, without being influenced by the observations made in the present order, which are limited to considering the remand of the matter.

(e) Considering that the claim is of the year 2013, the concerned Tribunal will hear the matter as expeditiously as possible, subject to exigency of work existing in the said

Tribunal.

9. The Appeal is disposed of in above terms. No order as to the costs.

10. All the concerned to act on duly authenticated/digitally signed copy of this order.

(M. M. SATHAYE, J.)