

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 461 OF 2023

HDFC Ergo General Insurance Co. Ltd. Lake City Mall, 4 th Floor, Kapurbavdi Junction, Majiwada Naka, Thane (W), Mumbai-400607	)))	...	Appellant/Org. Opp.No.2.
versus			
1. Mr. Mehrul Sirajul Miraj Jivachapada, Mu.No.29, Aarey Colony, Goregaon (East), Mumbai – 400065	)))		
2. Mr. K. V. Ramanaiah Kalabuja E/802, Building No. 76, Tilak Nagar, R. B. Chawl, Hanuman Mandir, Chembur, Mumbai – 400089. (Owner vehicle no. MH-01-AX-2101)	))))))	...	Org. Opp. No.1/Respondents

Mr. Abjijit P. Kulkarni a/w. Ms.Sweta Shah, Advocate for the Appellant.

Mr. Saumen Vidyarthi a/w. Ms. Ishita Bhole, Mr. Mohit T. and Parth Parikh i/b. Mr. Saumen Vidyarthi, Advocate for Respondent No.1/Claimant.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st FEBRUARY, 2024.

Oral Judgment :

1. The issues involved in this appeal are accident occurred due to sole negligence of the claimant and at the time of accident, the driver of the offending vehicle was not holding effective and valid driving license.

2. It is contention of learned counsel for the appellant-insurance company that the accident occurred due to sole negligence of the claimant. The claimant, in cross-examination, has admitted that he did not see the offending vehicle, it shows his negligence, but, this fact is not considered by the Tribunal. Learned counsel further submitted the driver of the offending vehicle was not holding effective and valid driving license but this fact is not considered by the Tribunal, hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.1/claimant that claimant was walking along the road-side. While walking, the rider of the offending motor-cycle dashed him. The accident occurred due to sole negligence of the rider of the motor-cycle. Learned counsel further submitted that an offence was registered against the rider of the motor-cycle. Learned counsel further submitted that to prove that the rider of the motor-cycle was not holding effective and valid driving license, no witness was examined by the appellant-Insurance Company. The order passed by the Tribunal is legal and valid, no interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Thane (for short "the Tribunal").

5. It is claimant's case that on 19th November 2013 at about 2.00 p.m., near Royal Palm Gate, Aarey Colony, Goregaon East, Mumbai, the claimant was walking along the roadside and he was suddenly dashed by the offending motor-cycle bearing No. MH-02-AF-2101. The mishap occurred due to rash and negligent driving of the motor-cyclist. Due to the dash, the claimant suffered serious injuries. An offence was registered against the rider of the motor-cycle. To prove the negligence of the rider of the motor-cycle, the claimant examined himself. He has stated that the accident occurred due to sole negligence of the rider of the motor-cycle. In cross-examination, he has admitted that he did not notice the motor-cycle. It is contention of learned counsel for appellant that it shows the claimant was negligent. In my view, the claimant was walking along the roadside, not noticing motor-cycle cannot be a ground to consider negligence of the claimant, as the rider of the motor-cycle dashed the claimant and offence was registered against the rider of the motor-cycle. Moreover to prove the negligence of the claimant, the rider of the motor-cycle did not step into the witness box, hence, I do not see merit in the contention that there was negligence of the claimant.

To prove the defense that the rider of the motor-cycle was not holding effective and valid driving license, the appellant-insurance company examined their officer – Sagar Gangurde. He has produced a copy of the charge-sheet. The police has registered offence against the rider of motor cycle for not having license. In my view, mere registering

the offence is not sufficient to prove that the rider of the motor-cycle was not having valid and effective driving license. It was onus on the appellant-insurance company to examine the officer from RTO office who keeps record of license but it was not done. Hence, I do not see merit in contention that at the time of the accident, the rider of the motor-cycle was not holding valid and effective driving license.

6. In view of above, I pass following order :

ORDER

1. The appeal is dismissed. No order as to cost.
 2. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)