IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 234 OF 2020

1. Uma Satish Vairat
   Age : 47 years, Occ : Household
   (Deleted since deceased as per order dated
   09.01.23)
2. Mangesh Satish Vairat
   Age : 29 years, Occ : Helper
3. Yogesh Satish Vairat
   Age : 26 years, Occ : Student
4. Sheetal Satish Vairat
   Age : 23 years, Occ : Household
   All R/O Lane No.6, Laxmi Nagar, Pimplegurav, … Appellants
   Pune.

Versus

1. Sangita Tanaji Nanavare
   Age : Major, Occ : Household
   (Nominee and Legal heir of deceased
   Registered Car Owner Tanaji Sukhdev Nanavare)
   R/O 11/10, J-Type, In front of Marathi School,
   Khadki, Pune
2. Divisional Manager
   The New India Assurance Co. Ltd.
   Legal Cell, 3rd Floor, Nehru Memorial Hall,
   Camp, Pune. ... Respondents

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Mr. Yogesh Pande, Advocate for the Appellants.
Ms. Poonam Mital, Advocate for Respondent No.2.

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CORAM : SHIVKUMAR DIGE, J.
DATE : 10th JANUARY, 2024.

JUDGMENT :

1. The issue involved in this appeal is exoneration of the Insurance Company.

2. It is the contention of learned counsel for the appellants/claimants that all the occupants in the offending car were friends of the owner of the offending car and they were going for the treatment and accident occurred. In the said accident, deceased and owner of the offending vehicle also died. Police recorded the statement of the wife of owner of the offending vehicle. In the said statement, she has stated that vehicle was taken on hire and reward basis and on that ground the Tribunal has held that there was breach of terms and conditions of insurance policy and exonerated Insurance Company which is not proper. Learned counsel further submitted that wife of owner of offending vehicle Mrs. Sangita Nanaware was not examined as a witness before the Tribunal. No evidence was produced on record to show that the offending car was taken on hire and reward basis. In spite of that, the Tribunal erroneously came to conclusion that there was breach of terms and conditions of insurance policy which is erroneous, hence requested to allow the appeal.

3. It is the contention of learned counsel for the Insurance Company that, to prove the defence, the Insurance company has examined its officer and police officer who recorded the statement of Mrs. Sangita Nanaware. Police officer has stated that he had recorded statement of Sangita. As per her say, the order passed by the Tribunal is legal and valid and no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Pune (for short "**the Tribunal**"). It is claimants' case that on 22.11.2015 at 1:30 p.m. deceased had gone to village Avirwat along with his friend Tanaji Nanaware owner of Ertiga Car bearing No. MH-42-K-7730 for medical treatment of Pooja Lakhan and after treatment they were returning to Pune from Avirwat. The car was being driven by Rohit Gaikwad in rash and negligent manner. When car reached near Khambatki tunnel on Bangalore-Pune Highway, he lost his control over the said car, hence, the said car turtled by the side of the road and deceased and Tanaji Nanaware sustained grievous injuries and died on the spot.

5. While dealing with the issue of liability of payment of compensation, the Tribunal has observed that the insurance policy was valid on the date of accident. It has come in the evidence of Narayan Pawar, Assistant Commissioner in State Intelligence Department that he had recorded statement of seven witnesses including Sangita Nanaware, wife of owner of offending vehicle that she has stated to him that Madan Lakhan had hired their car to go to village Avirwat. Thus, it is proved that deceased was traveling in the said car as unauthorised passengers.

6. The Tribunal has come to the conclusion that the deceased was traveling as unauthorised passenger in the offending car and there was breach of terms and conditions of insurance policy. In my view, the Tribunal has not considered evidence on record properly. It is significant to note that Sangita has not been examined as witness before the Tribunal. There were other occupants in the said offending car, those are not examined as a witness. The complaint was given by Gopal Lakhan but he has not been examined as a witness by the Insurance Company to prove that the offending vehicle was taken on hire and reward basis. It has come on record that all the occupants of the car including the deceased owner and deceased Satish Vairat, Gopal Lakhan were employer in common placement at Khadki and they were residing in common vicinity. It appears from the record that the car was taken on humanitarian ground for the medical treatment of Pooja Lakhan. Had it been taken on hire and reward basis, the owner of the offending car would not have travelled with the occupants in the said car. But this fact is not considered by the Tribunal and the Tribunal has given weightage to the statement given by Sangita to the police. It is settled law that statement recorded during the course of investigation can be used for recording omission or contradiction in the testimony of the witness. When the Investigating Officer recorded the statements of occupants of the car, they have not stated that the said car was taken on hire and reward basis. Smt. Sangita was not occupant of the said car but the Tribunal has considered the statement of Sangita only given before the police which is erroneous. The Tribunal has relied on the statement of the person who has not been examined before the Tribunal and the Tribunal has held that her statement is correct which is erroneous. The Insurance Company has examined their officer- Boopelli Gautam as a witness. He has stated that he is giving evidence on the basis of statement of Smt. Sangita given to police. In cross examination he has admitted that the investigator was appointed by the Insurance Company to investigate the accident, but his report was not produced on record. The question remains why the report of Investigator was not produced on record when the Insurance Company was aware that the offending vehicle was hired by the deceased. As observed earlier, statement given to the police cannot be considered as gospel truth, unless it is proved before the Tribunal. Admittedly, at the time of accident the offending vehicle was insured with the Insurance Company, hence Insurance Company is liable to pay compensation to the claimants and I am setting aside the order passed by the Tribunal about exoneration of the Insurance Company from paying compensation.

7. In view of the above, I pass following order:

ORDER

(i) The appeal is allowed.

(ii) The Insurance Company shall pay the compensation as fixed by the Tribunal to the claimants along with accrued interest thereon.

(iii) The Insurance Company shall deposit the compensation amount within six weeks along with accrued interest thereon.

(iv) The claimants are permitted to withdraw the amount deposited by the Insurance Company along with accrued interest thereon.

8. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2024.01.30 17:33:26 +0530