IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1082 OF 2023

The General Manager
Bajaj Allianz General Insurance Company Ltd.
Address : Sumangal Business Court, 3rd Floor, Near Hotel Tulsi, Yeolekar Mala, College Road, Nashik … Appellant

Versus

1 Mahesh Ashok Lande
Age : 25 years, Occ : Agriculture For Handicapped Petitioner through Ashok Anand Lande
Age : 44 years, Occu : Agriculture
Residing at Rendale, Tal : Yeola
District : Nashik

2 Pramila Uttamrao Patil
Age : 55 years, Occu : Owner
Residing at Samartha Nagar, Saygaon Satana Naka, Malegaon, District Nashik ... Respondents

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Mr. Sarthak S. Diwan, Advocate for the Appellant.
Mr. Pritesh K. Bohade, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.
DATE : 18th APRIL, 2024

ORAL JUDGMENT :

1. The issue involved in this appeal is pay and recovery order passed by the Tribunal and contributory negligence of the deceased.

2. It is contention of learned counsel for the appellant / Insurance Company that at the time of accident driver of offending vehicle was not holding effective and valid driving licence. The said fact is proved before the Tribunal. The Tribunal should have exonerated the Insurance Company from paying the compensation but the Tribunal has passed pay and recover order which is erroneous. Learned counsel further submitted that accident occurred due to contributory negligence of the claimant but this fact is not considered by the Tribunal. Hence requested to allow the appeal. He relied on ***Swapnil S/o. Suresh Mandlik Vs. The Branch Manager, The New India Insurance Co. Ltd.*** passed in First Appeal No. 567 of 2019 with First Appeal No. 568 of 2019.

3. It is contention of learned counsel for the respondents/ claimants that the Tribunal has considered all the aspects while passing Judgment and Order, no interference is required in it. He further submitted that to prove the contributory negligence of the claimant, no witness is examined by the appellant /Insurance Company, hence requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Nashik (for short "**the Tribunal**"). It is claimant's case that on 18.10.2018, at about 9:30 p.m. the claimant was traveling on motorcycle. He was proceeding from Yeola side to Manmad side. At Kasarkheda village, near bifurcation, one truck bearing No. MH41/G 5621 came from opposite direction. The driver was driving it rashly and negligently and in high speed without looking to the condition of the road. Because of that, the said truck suddenly overturned and gave dash to the motorcycle of the claimant. Due to said dash claimant seriously injured. The offence was registered against the driver of the truck. To prove the negligence of the driver of offending truck, the claimant has examined himself. He has stated that accident occurred due to negligence of the driver of truck. Nothing elicited in the cross examination of this witness. The driver of offending truck has examined himself, he has stated that accident occurred due to negligence of the claimant. While dealing with the issue of negligence, the Tribunal has observed that the FIR in respect of the accident was lodged by one injured Dilip Patil who was traveling in one Swift car at the relevant time. The spot panchanama at Exhibit-21 shows that the driver of offending truck was driving the truck rashly and negligently. Considering evidence on record, the Tribunal has considered that accident occurred due to sole negligence of the driver of offending truck. I do not find infirmity in it. In my view, it has come on record that due to high and excessive speed, the truck was turned turtle and it dashed against the motorcycle of the claimant. It also dashed other vehicles that one of the injured in that accident lodged FIR against the truck driver, so no question of negligence of the claimant arises. Hence, I do not see merit in the contention that accident occurred due to contributory negligence of the claimant.

5. To prove the defence that the driver of offending vehicle was not holding effective and valid driving licence at the time of accident, the appellant / Insurance Company has examined Poonam Nikam, Junior Clerk of R.T.O. Malegaon at Exhibit-45. This witness has stated that driver of offending vehicle had applied to the Dy. R.T.O. Malegaon for licence of transport vehicle on 05.09.2018 and on the next date i.e. on 06.09.2018, he was declared pass in the said test by that office, however the licence of transport vehicle was issued to him from 19.10.2018.

6. It is contention of learned counsel for the appellant/Insurance Company that the date of accident is 18.10.2018, so on the date of accident the driver was not holding effective and valid driving licence. The driver of offending vehicle examined himself to prove that he was having driving licence. He has further stated that in the year 2017, R.T.O. office Malegaon issued him licence of two wheeler as well as four wheeler. Thereafter, on 05.09.2018 he had applied to the R.T.O. Malegaon for licence of the truck i.e. transport vehicle and he passed that driving test on 06.09.2018. He produced the papers on record. The said papers are at Exhibit-58. While dealing with the issue of driving licence the Tribunal has observed that on the date of accident driver was not holding effective and valid driving licence. There was breach of terms and conditions of insurance policy. On that basis Tribunal has passed pay and recover order. I do not find infirmity in it. In my view, driver had licence of driving the four wheeler vehicle it was issued to him in the year 2017. Thereafter, he applied for licence of driving truck on 05.09.2018 he had passed the said test. The licence is issued on the next day of the accident, as licence of driving four wheeler was issued in the year 2017 hence it cannot be said that he was not aware of the driving skill. Moreover, he had passed driving test of transport vehicle prior to accident. At the time of accident the offending vehicle was insured with the appellant/Insurance Company it is settled principle of law that if there is breach of terms and conditions of insurance policy the Insurance company has to pay the compensation and recover it from the owner of the vehicle. Hence, I do not see merit in the contention that the Insurance Company should have been exonerated from paying compensation.

7. I have gone through the case law cited by the learned counsel for the appellant/Insurance Company. The facts of cited case and case at hand are different, hence not applicable. In view of above, the appeal is devoid of merit and I pass following order.

ORDER

(i) The appeal is dismissed.

(ii) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

(iii) The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

(iv) In view of dismissal of appeal, all pending applications, if any also disposed of.

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2024.05.02 14:49:43 +0530