



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.1098 OF 2009

United India Insurance Company Ltd.
Through its Regional Manager, Branch
Office, Khamgaon, Tq. Khamgaon,
Distt. Buldana.

...APPELLANT

...V E R S U S...

1. Vijay S/o Ramkrishna Jaiswal,
Aged about 30 years, Occ: Service,
R/o Chandol, Tq. & Dist. Buldana.
2. Lakhan s/o Mansabkhan Pathan
Aged about 60 years, Occ: Agriculture &
Business, R/o Chandol, Tq. &
Dist. Buldana.

...RESPONDENTS

Appeal is abated
against Resp. No.2
vide order dated
30.10.2023

Ms Mrunal Naik, Advocate for Appellant.

CORAM :- M.W. CHANDWANI, J.

ARGUMENTS WERE HEARD ON :- 02.07.2024.

JUDGMENT IS PRONOUNCED ON :- 23.09.2024

JUDGMENT:

1. This appeal preferred under Section 173 of the Motor Vehicles Act, 1988 assails the judgment and order dated 05.11.2008 passed by the Member of the Motor Accident Claims Tribunal, Buldana (hereinafter referred to as "Tribunal" for short) in M.A.C.P. No.135/2003.

2. By the impugned award dated 05.11.2008, the Tribunal granted compensation of Rs.2,22,280/- alongwith

interest at the rate of 7.5% p.a. from the date of the claim petition to respondent no.1/claimant on account of injury caused to him in vehicular accident that occurred on 14.03.2000.

3. Respondent no.1 filed the claim petition before the Tribunal claiming that he went to Paithan to attend the marriage of his friend Anil Rajput. While returning from Paithan in a Jeep bearing registration No.MH 38/A-8188, which was insured with the appellant, the driver of the said Jeep, driving in a rash and negligent manner, dashed against the tractor and trolley parked on the roadside, wherein he sustained injuries on the forehead and the right femoral head. He was admitted in the hospital and treated, therefore, he claimed a compensation of Rs.4,40,000/-. The appellant appeared and denied the claim of respondent no.1. After hearing, by the impugned award, the Tribunal granted compensation of Rs.2,22,280/- to respondent no.1 and directed the appellant and respondent no.2 to pay the compensation jointly and severally alongwith interest at the rate 7.5% per annum from the date of application till its realization.

4. The main contention raised in this appeal is that, the Jeep was a private vehicle but been it has used for the commercial

purpose of carrying passengers for marriage and the vehicle is covered under Act Only policy, therefore, risk of the occupant of the jeep was not covered under the insurance policy. It is also contended that this specific ground was raised in the written statement filed before the Tribunal but that has not been considered.

5. I have heard learned counsel for the appellant and also gone through the record and proceedings of the Tribunal. Bare perusal of the written statement filed by the appellant, which is at Exh.47 in record and proceedings of the Tribunal, does not reveal that such a defence was taken in the written statement. Rather, the defence which has been taken in written statement is that the driver of the Jeep was carrying more passengers than the permitted capacity. Therefore, I do not find any substance in the argument of the learned counsel for the appellant. The Tribunal has rightly observed that the said defence has been not been taken in the written statement and rejected the argument of the appellant regarding the use of the vehicle commercially.

6. Be that as it may, even otherwise, cover note Exh.64 goes to show that the policy is Hire or Reward policy which itself suggests that the policy permits carrying of passengers in the

vehicle, therefore, the argument advanced by the learned counsel for the appellant does not hold water with the aspect to the fact that respondent no.1-occupant/passenger of the said Jeep cannot be compensated.

7. Above all by filing this appeal, the appellant wants to fasten the liability on respondent no.2 i.e. owner of the Jeep but the fact remains that respondent no.2 died and appeal against him is abated. No legal heirs have been brought on record by the appellant. In that scenario also i.e. in absence of legal heirs of deceased respondent no.2 on record, no liability can be fastened on them. The appellant itself did not add legal heirs of deceased respondent no.2 as party respondents.

8. In view of above, no interference is required in the impugned award. The Tribunal has rightly held the appellant and deceased respondent no.2 jointly and severally liable to pay the compensation amount. The appeal is devoid of merits and same stands dismissed.

JUDGE

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