IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 FIRST APPEAL NO. 2246 OF 2024
WITH
CIVIL APPLICATION NO. 2862 OF 2021
IN FA/2246/2024
WITH

CIVIL APPLICATION NO. 8258 OF 2024
IN FA/2246/2024

THE ORIENTAL INSURANCE CO. LTD., THR ITS DIVISIONAL MANAGER, ADALAT ROAD, AURANGABAD
VERSUS
DAIVASHALA W/O MADHAV (MADHU) GAWANDE
...
Advocate for Appellant : Mr. Kanade Arun G.
Advocate for Respondent : Ms. Pratibha J. Bharad
And Ms. Usha N. Jadhav
...

CORAM : S. G. CHAPALGAONKAR, J.
Dated : January 23, 2025

PER COURT :-

1. The appellant insurer impugns the judgment and award dated 18.10.2020 passed by the Motor Accident Claim Tribunal, Nanded in MACP No. 179/2011. The respondent/ claimant has instituted Motor Accident Claim before Tribunal at Nanded, seeking compensation of Rs. 2 Lakh under the provision of 166 of Motor Vehicle Act.

2. It is the contention of claimant that on 10.12.2009, she was proceeding in auto rickshaw bearing registration No. MH-26-N-0697. The driver of the rickshaw drove the vehicle speedily and in negligent manner. Consequently, it toppled, resultantly, she suffered multiple injuries. The claimant was admitted as indoor patient from 10.12.2009 to 25.12.2009. She

was operated for injuries. However, she suffered permanent disablement. The respondent / Insurer contested the claim denying factum of the accident contending that in fact claimant suffered injuries since she fell in ditch. The injuries have no connection with the accident involving insured vehicle. The claimant in support of her contention relied on her own evidence, so also evidence of PW 2 driver of the auto rickshaw. She has placed on record the certificate of the disablement at exhibit 33 issued by Shri Guru Govind Memorial Hospital, Nanded. The tribunal upon consideration of rival contentions and evidence on record allowed claim petition and passed an award for Rs. 1,43,200/- along with interest of Rs. 7.5 % per annum in favour of the claimant.

3. Mr. Kanade, learned Advocate appearing for the appellant submits that the appellant herself was the owner of the auto rickshaw involved in the accident. Therefore, she could not have maintained the claim under Section 166 of the Motor Vehicle Act. He submits that in fact the claimant could not prove the motor vehicle accident and consequential injury suffered in accident involving insured vehicle. He submits that author of Dissability certificate is not examined before tribunal as such claim ought to have been dismissed.

4. Learned counsel appearing for the respondent, however submits that the auto rickshaw was duly insured with respondent. By way of additional contract, personal accident cover was extended to the owner. The liability to the extent of Rs. 2 Lakh has been covered. Therefore, the Tribunal is justified in passing award.

5. I have considered the submissions advanced by learned Advocates appearing for the respective parties and gone through the record and proceeding.

6. It is true that the claimant herself is owner of the auto rickshaw. The insurance policy which is filed on record shows that the personal accident cover is extended to cover risk of owner and premium of Rs. 100/- has been recovered on that count. The policy copy is at exhibit 41. It simply suggests that PA for owner driver for Rs. 100 has been charged. However, other terms and conditions of the contract are not specified. Although respondent / insurance company examined its branch Manager, he could not throw light as to nature of cover extended to the owner driver as against acceptance of premium of Rs. 100/- In absence of any such terms and conditions on record, it will have to be presumed that policy covers unconditional risk of owner. In that view of the matter, no fault can be found in judgment of tribunal holding appellant/insurer liable to pay the compensation. The awarded amount is within specific limit of Rs. 2 Lakh as stipulated under clause of limits of liability. Therefore, the first contention of the appellant that the risk of the owner was not covered and the claim could not have been maintained, cannot be accepted.

7. Mr. Kanade, endeavors to contend that the medical certificate exhibit 33 has not been proved by leading evidence of the author. The perusal of the certificate shows that it is issued by the government hospital. Further, the tribunal considered reduced disability while making assessment of the compensation. In that view of matter, there is no scope to

interfere award for the reason that the author is not examined. Hence, the appeal sans merit and dismissed. The amount deposited by appellant /insurer be disbursed to the claimant along with interest thereon. In view of dismissal of appeal, the Civil Applications are disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

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