Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 87 OF 2024
WITH
INTERIM APPLICATION NO. 18307 OF 2023
IN
FIRST APPEAL NO. 87 OF 2024

Divisional Manager, Shriram General Insurance Co. Ltd., Nashik	…Appellant/ Applicant
Versus	
Bhika Narayan Madan (Orig. Claimant) and Anr.	…Respondents

Mr. Aniesh S Jadhav a/w Shyam K. Singh, for the Appellant / Applicant.
Mr. Rajan S. Pawar a/w T.J. Mendon, for the Respondents.

CORAM: R. M. JOSHI, J.

DATED: 22nd JANUARY, 2026.

PC:-

1. By consent of both the sides, heard finally at the stage of admission.

2. This appeal under Section 173 of the Vehicles Act takes exception to the judgment and award dated 08.03.2023 passed in M.A.C.P. No.1222 of 2017, whereby Tribunal has granted compensation of Rs.3,80,011/- including the NFL amount towards compensation along with interest @6% p.a. from the date of filing of the claim-petition till its realization. The Appellant takes exception to the judgment and award on the ground that there was no valid insurance policy during the relevant period and hence the Insurer is not liable for payment of compensation. Exception to the said judgment and award is also taken on the ground that the Tribunal has committed error in accepting the disability of the Insured without considering evidence on record.

3. Learned counsel for the Appellant/Insurer submits that the Insurer has taken specific defence that the cover note which was sought to be relied upon by the claimants was a fake cover note. Alternatively, it is submitted that even otherwise the Insured i.e. the owner of the offending vehicle has submitted written requisition for cancellation of the policy which is at Exhibit-44. It is his submission that by reading evidence of two witnesses this contention has been proved before the Tribunal, however, the Tribunal in ignorance of the said evidence, directed payment of compensation by the Insurer herein to the claimants. On the point of disability it is submitted that the evidence of Dr. Kishor Dange PW-3 shows that he has not taken X-ray of the patient nor has produced any record in respect of any assessment done by him in respect of the disability. It is his contention that on such evidence, the Tribunal is not justified in granting the compensation.

4. Learned counsel for the Respondent-original claimants supported the impugned judgment and award.

5. There is no dispute made by the parties with regard to the fact that on 10th June, 2017 the accident occurred involving a car bearing No. MH-05-AJ-5319 in which claimant sustained injuries.

6. The owner of the offending vehicle failed to cause appearance before the Tribunal and claim proceeded *ex-parte* against him. The Insurer, however, filed written statement denying contentions of claimant. It is specifically averred therein that the offending vehicle was not insured with the Insurer. It is also claimed that the cover note / policy is fake and not issued by the Insurer nor any premium was paid against the same. Alternatively, it is contended that the request was made by the owner of the offending vehicle for cancellation of the said policy, and in view of the same there is no liability of the Insurer to pay any compensation.

7. Though such plea was raised in the written statement, as observed by the learned Tribunal that the witnesses examined by the Insurer in the cross-examination has accepted the fact that the insurance policy was issued on 18.06.2016 for a period of 18.06.2016 to 17.06.2017 and premium of Rs.19,126/- was also accepted. In view of the said evidence it is clear that the defence of the Insurer about the fake policy / cover note is not sustainable. As far as the contention of the Insurer with regard to the cancellation of policy is concerned, once it is admitted that the policy existed on payment of premium unless it was specifically cancelled by the Insurer, the liability arising out of the said policy could not have been denied by them. In such circumstances, the findings recorded by the Tribunal in respect of entitlement deserves no interference.

8. Needles to say that the claimant is required to prove his contention including the causing injuries resulting into the disability on preponderance of probability.

9. Apart from deposing accordingly on oath, he led evidence of Dr. Kishor Dange PW-3 who is the medical officer attached to Malegaon Civil Hospital. He assessed the disability of the claimant to the extent of 25%. The expertise of the witness who assessed the disability is not under challenge. Owing to the nature of the injuries caused to the claimant, the disability assessed by the expert does not deserve any interference. Having regard to the facts of the case, total amount of compensation of Rs.3,80,011/- granted by the Tribunal cannot be termed as excessive to cause any interference therein.

10. In view of the above, there is no merit in the appeal.

11. Hence, appeal stands dismissed.

12. In view of disposal of the appeal, interim application does not survive hence disposed of.

(R. M. JOSHI, J.)