

(2009) 04 BOM CK 0031

In the Bombay High Court

Case No : F.A. No's. 3564, 3565 and 4203 of 2008 in Civil Application No's. 6031, 6033 and 6025 of 2008

New India Assurance Co. Ltd.

APPELLANT

Vs

Babruwan and Others

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Citation : (2009) ACJ 2871

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : V.R. Mundada, for the Appellant; Sanjay Mundhe and P.B. Rakhunde, for the Respondent

Final Decision : Dismissed

Judgement

K.U. Chandiwal, J.—Heard the learned Counsel for the respective parties.

2. These three appeals moved by insurance company arising out of the accident dated 17.12.2005, question legality and propriety of the order recorded by learned Member, Motor Accidents Claims Tribunal, Latur by award dated 5.1.2008 in M.A.C.P. Nos. 107, 108 and 80 of 2006 respectively.

3. The extensive submissions by the counsel for appellant centre to the crucial aspect that the driver of the jeep, Majid Kazi had no valid licence on the date of accident, which he has renewed subsequently. Secondly, Balu Shrirang Ghante was driving his tractor attached with fully loaded two trollies with sugarcane. As per the provisions of Motor Vehicles Act, 1988, specific motor driving licence is issued for driving a tractor attached with trolley or trollies. However, the tractor driver had only a driving licence to drive light vehicle. The damages to the tractor were erroneously considered, documents were not properly proved. It is not established that the driver of the jeep was at fault. The jeep driver was not made a party. The insurance company of the tractor was not made as a party. The claimants in First Appeal No. 4203 of 2008 (M.A.C.P. No. 80 of 2006) were

entitled to Rs. 1,00,000 as deceased Ashok was travelling in the jeep and covered for that amount only.

4. Counsel for the respondents pointed that the deficiency, if any, in the tractor or its driver will not be available to be argued as it is not open to the insurance company. Even the written statement is silent. The insurance company did not prove that the driver of the jeep had no valid licence or that it was not renewed. Breach of terms of policy should be proved. However, insurance company did not step in. The jeep driver continued to hold licence on its renewal.

5. On 17.12.2005, there was head-on collision between jeep bearing registration No. MH 25-B 656 with the tractor registration No. MH 25-B 1550. The accident has taken place at a curve, where the driver of jeep could not control the vehicle and dashed against the tractor, which, in fact, had suffered to a large extent by damages. The driver of the jeep has faced a criminal case.

6. The copy of F.I.R., Exh. 40; spot panchnama, Exh. 41 and photographs of the scene of offence having been perused indicate the velocity with which the jeep was moving. The tractor was coming from the opposite side. The tractor though was attached with two trollies, was moving at extreme left side of the road proceeding towards Latur in moderate speed. At the place of accident, there was curve. Though width of the road is sufficient to cover more than 2-3 vehicles, the impact caused by the jeep was directly on the tractor, which is apparent from the map attached to the spot panchnama, Exh. 41. The spot situation and evidence leaves no doubt that there was no fault on the part of the driver of the tractor to attribute any negligence to him. The driving of the tractor with two trollies or without any valid permit to do so, will be of no consequence against the driver. The non-impleadment of insurance company of the tractor in this backdrop is not fatal.

7. It is not established by the insurance company that there was breach of the terms of the insurance policy by the jeep driver. The insurance company did not prove that the licence of the jeep driver was not in force having expired on 17.12.2005. The insurance company did not examine the concerned officials from the transport licensing authority. Reliance placed on the photocopy of the licence, by itself will not be sufficient as firstly the photocopy is blurred and difficult to read its contents, I could not read it, nor counsel could show the dates and secondly, it is not legally proved. Its placing on record by the claimants having got it from police, by itself will not be admission to proof of such licence. It is contended Majid Kazi, the driver, had renewed the licence after the accident. These questions of facts are not proved. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , the Apex Court, clearly laid down "the liability of insurance company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that driver had an appropriate licence to drive the vehicle". It is not a case of a fake licence or no licence, but it is a case of validity

of the licence on the date of accident. The obligation cast on insurance company is not vitiated.

8. It was canvassed that the driver of the jeep is not arrayed as a party. However, non-impleadment of the driver of the jeep by itself is not fatal. Insurance company by leave of court could examine him. Claimants had indeed proved negligence of the jeep driver but as stated earlier, insurance company appellant has failed to establish breach of policy conditions.

9. Ashok was a passenger in the jeep. On account of impact of two vehicles, he sustained serious injuries and expired in the hospital which is proved by the panchnama, post-mortem report, Exh. 43. It is not so seriously challenged. The deceased Ashok was a milk vendor and was earning an income of Rs. 1,500 to Rs. 2,000 per month from it. Certificates at Exhs. 37 and 38 indicate that he possessed four she-buffaloes. Deceased having monthly earning as a driver to the tune of Rs. 2,000 to Rs. 3,000. The learned Member of the Tribunal assessed income of Ashok to be Rs. 30,000, after deducting 1/3rd amount out of total income for personal expenses of the deceased, the dependency has been assessed at Rs. 20,000 per annum. Since Ashok was 18 years old and considering the dependency, the learned Member has rightly applied multiplier of 15, added to it is the funeral expenses and consortium of Rs. 7,000, the award of Rs. 3,07,000, in the situation, cannot be called to be erroneous.

10. In M.A.C.P. No. 107 of 2006, the claimants sought damages to the tune of Rs. 2,61,313. Learned Judge, on evaluating the documents tendered has assessed it at Rs. 1,08,500. The evidence of the claimants Babruwan and Bharat was evaluated, which has been found to be supported by the recitals in the F.I.R. coupled with spot panchnama. The complainant Javed was travelling in the offending jeep. He has specifically stated that jeep driver Majid Kazi was driving the vehicle rashly and in a high speed. It was the said complainant, drivers of both the vehicles and the passenger in the jeep suffered serious injuries.

11. The testimony of Bharat about damage of the tractor was found supported by Vijay Kulkarni, CW 3, the assessor of the vehicle. He has on 18.12.2005 visited the place of accident, snapped photographs and also verified the damage. Whatever the claimants assessed, he has deducted 40 per cent amount towards depreciation in relation to parts of the tractor to be replaced and the ultimate assessment of damaged part of the tractor was Rs. 1,08,500. Though the labour charges of Rs. 14,350 were added, however, the learned Judge did not entertain the same. Learned Judge has not considered the bills at Exhs. 37 and 38 produced by Narsing Wagh, CW 4, as they were overlapping and has rightly negated the contention to the exorbitant claim. The ultimate analysis of award of Rs. 1,08,500 towards damages caused to the vehicle does not need any interference.

12. In M.A.C.P. No. 108 of 2006, the claimant Balu Shrirang Ghante is the driver of the tractor with two trollies loaded with sugarcane. He has testified that he

was driving the tractor in moderate speed and by his left side of the road.

13. The said claimant has produced medical certificate, Exh. 33; discharge card, Exh. 34, issued by Vivekanand Hospital, Latur. Dr. Ashok Kukade, CW 3, has examined the claimant who was admitted in hospital on 18.12.2005 and discharged on 25.1.2006. There was head injury to the claimant associated with cerebral bleeding, spinal cord injury in the neck region and fracture to left femur. Dr. Ashok Kukade having examined the claimant recorded that the disability suffered by the claimant was 100 per cent which was permanent in nature as the movements of the claimant are absolutely arrested. He is required to adhere to strict bedrest. The evidence of the claimant was indeed on commission and his pain and suffering were beyond comprehension. It was also pointed that the claimant has lost his prospects of leading a matrimonial life.

14. Assessment of the damage caused to the claimant, considering the monthly salary of Rs. 3,000, supported by the employer Bharat, coupled with diet charges of Rs. 100, was rightly considered by the learned Judge. The claimant Balu is 35 years old and applying multiplier of 16 and assessing his annual income to be Rs. 36,000 and added to it are the medical bills, which was considered, the ultimate award of Rs. 6,88,800 in favour of the claimants, in the facts of the case is not exorbitant. I reiterate, claimant has established that he was not at fault while driving the tractor and it has been established that the jeep driver was totally negligent at the material time of accident, taking toll of life of Ashok and causing damages to other passengers, causing severe damage to the tractor. The appeals lack merit, they are accordingly dismissed with civil applications. No costs.