(2022) 02 BOM CK 0011

In the Bombay High Court

Case No : First Appeal No.334 Of 2009

New India Assurance Company Ltd — APPELLANT

Vs

Bhagaji And Others — RESPONDENT

Date of Decision : 03-02-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2022) 02 BOM CK 0011

Hon'ble Judges : R. G. Avachat, J

Bench : Single Bench

Advocate : S. G. Chapalgaonkar, S. K. Barlota

Final Decision : Dismissed

Judgement

R. G. Avachat, J

1. This is an Insurance Companyâ??s appeal, taking exception to the judgment and award dated 30.04.2008 passed by the Member, Motor Accident

Claims Tribunal (Tribunal), Aurangabad in Motor Accident Claim Petition No.26 of 2002. Under the impugned judgment and award, the claimants

therein, respondent Nos. 1 and 2 herein, have been granted compensation of Rs.1,50,000/- with interest at the rate 9@ per annum from the date of

petition to the date of realisation. It was a third party property damage claim.

2. Facts giving rise to the present appeal are as under:

It was an accident between a Matador bearing registration No. MH-20-A-6409 and a Scooter carrying large truck bearing registration No. GJ-15-X-

148. The Matador belonged to Jayaji (deceased). He (deceased) was at the wheel of the Matador when accident took place. As a result of the

injuries suffered in the said accident, Jayaji passed away. On due investigation, the driver of the truck was proceeded against. The parents of Jayaji

(claimants) had filed claim for compensation on account of death of their son - Jayaji. The said petition was allowed. The award passed therein has

attained finality. As such, there is no question as to whether the accident took place due to rash and negligence on the part of the deceased.

3. Both the vehicles involved in the accident, were insured with the appellant â?" New India Assurance Company Limited. In the accident, the

Matador was extensively damaged. It became unpliable. The claimants being successors in interest of the Matador owner â?" Jayaji, had made an

Own Damage (O.D.) claim to the appellant - Insurance Company. It was allowed, granting compensation of Rs.1,20,000/-. Thereafter, the petition

came to be filed against the driver, owner of the offending vehicle and its insurer (appellant herein) for compensation on account of damage of the

Matador. It was the case of the claimants that the motor mechanic gave an estimate of Rs.3,14,800/- towards cost of repairs of the Matador so as to

bring it on road. The compensation amount received in O.D. claim, has all been directly received by the Maharashtra State Finance Corporation

(M.S.F.C.), which had granted loan for purchase of Matador. The cost of new Matador at the relevant time was Rs.4,39,500/- . The insurer estimated

the value thereof at Rs.3,66,000/-.

4. On appreciation of evidence in the case, the Tribunal has observed thus:

â??9. â?¦â?¦. In fact, insurerâ??s estimated value was shown as Rs.3,66,000/- while cost of new vehicle was Rs.4,29,500/-. It has to be considered

that, vehicle is in such a condition that it cannot be used on the road again. Admittedly, Matador was purchased on 8.3.1995 while accident took place

on 1.8.1999. Thus, the matador was used by claimants for about 4 years and 5 months. Matador was taken on loan and it can easily be imagined that,

claimants would have been required to pay considerable interest on loan amount. Besides matador cannot be used now as it is damaged completely.

Considering all these circumstances, compensation of Rs.1,50,000/- would meet ends of justice, in my opinion. It is a third party property damage claim

and in my opinion, Tribunal may not go into minute details of exact amount of repairs or exact amount of damage. â?¦.â??

The appellant â?" Insurance Company, is therefore in appeal herein.

5. Heard.

Learned Advocate for the appellant â?" Insurance Company would submit that the claimants have already received an amount of Rs.1,20,000/- from

the appellant towards O.D. claim. The Surveyor had assessed the loss. The assessment of the Surveyor is not challenged. There is no evidence to

contradict the Surveyorâ??s report. The claimants have received the compensation towards O.D. claim as per the Surveyorâ??s report. There is no

further cause of action to make good the loss under third party claim. The Matador was purchased way back in 1995. The vehicle was more than four

years old. It had depreciated in value after use. The claimants have retained the vehicle after the accident. The salvage value of the vehicle was

assessed at Rs.70,000/-. As such, the claimants have received the entire amount as against damage/loss sustained by them. Unless and until the

claimants demonstrate that they have suffered actual loss as claimed in the petition, the Tribunal ought not to have granted damages. No bills of repair

or spare parts have been proved. There is no pleadings in the claim petition in this regard. The assessment made by the Surveyor is binding on both the

contracting parties to the insurance contract. On all these counts setting aside the impugned award was urged for.

6. The learned Advocate for the claimants would, on the other hand, submit that the claimants had in fact suffered damage/loss in excess of what has

been granted in O.D. claim. The vehicle was only source of income for the family. The entire amount received under the O.D. claim has been

appropriated by M.S.F.C. towards repayment of loan granted for purchase of the Matador. The damaged Matador has been lying at the garage. To

make that Matador roadworthy, the claimants required a sum of over Rs.3,00,000/- (Rupees Three Lakh). According to the learned Advocate, no

fault could be found with the impugned award. He, therefore, urged for dismissal of the appeal.

7. Considered the submissions advanced. Perused the pleadings and evidence as well. Gone through the impugned judgment and award.

It appears that more has been argued and urged on behalf of the appellant â?" Insurance Company beyond its pleadings. Admittedly, the Matador

owned by the deceased was extensively damaged in the accident. The claimants had therefore preferred O.D. claim. Both the vehicles involved in the

accident were insured with the appellant â?" Insurance Company herein. The claimants have been granted a sum of Rs.1,20,000/- towards O.D.

claim. The papers of the O.D. claim have not been placed on record. It also appears that the attention of the Tribunal was not adverted to the policies

of insurance of both the vehicles involved in the accident. Close reading of the written statement filed by the appellant â?" Insurance Company before

the Tribunal would indicate that it is its case that when the claimants have accepted a sum of Rs.1,20,000/- towards O.D. claim, no petition under

Section 166 of the Motor Vehicles Act for the same claim is maintainable.

8. It is reiterated that it is not known as to whether under the policy of insurance of the damaged vehicle, the O.D. claim was restricted to certain

amount. No papers of O.D. claim have been placed on record. The appellant â?" Insurance Company did not lead any evidence in proof of its stand.

The claim was subjected to a very scanty cross examination. For better appreciation, the entire cross examination of the claimant is reproduced

below.

â??It is not correct to say that accident has taken place due to fault of the driver of the metador. After accident, I have submitted O.D. (own

damaged) claim with respondent no.3 under the policy of insurance of vehicle Metador bearing R.No.MH-20-A-6409 and I have received amount of

Rs.1,20,000/-. It is not correct to say that I have received the complete amount as per the law assessed by Surveyor. It is not correct to say that I am

deposing falsely that my son deceased Jayaji used to earn Rs.300/- per day income by use of said metador. It is not correct to say that I am deposing

falsely that the proprietor has shown the estimated costs of painting, welding and repairing works to the tune of Rs.3,14,800/-. It is not correct to say

that I have not sustained any loss and I have claimed exorbitant amount of compensation â?¦..â??

9. It has been specifically averred in the evidence by the claimants that the estimated cost of repairs of the damaged vehicle to make it roadworthy

condition is Rs.3,14,800/-. The entire amount (Rs.1,20,000/-) received under the O.D. claim has been appropriated towards repayment of the loan

raised from M.S.F.C. The Tribunal, after having considered all these facts, granted a lump sum amount of Rs.1,50,000/- as compensation. It appears

that the claimants have withdrawn the entire amount, true as against bank guarantee. In these peculiar facts and circumstances of the case, this Court

is not inclined to interfere with the impugned award.

10. In the result, the appeal fails. The same is therefore, dismissed.

11. The amount in deposit with this Court, be paid to the respondents â?" claimants with interest accrued thereon.

