(2000) 11 BOM CK 0006

In the Bombay High Court

Case No : F.A. No. 827 of 1989

Oriental Fire and Genl. Ins. Co. Ltd. APPELLANT

Vs

Kumar Rahul Baben Khandagale and Another RESPONDENT

Date of Decision : 08-11-2000

Acts Referred:

Citation : (2001) ACJ 611

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : S.S. Vidyarthi, for the Appellant; S.M. Oka, for A.P. Vaze, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—The Oriental Fire & General Insurance Co. Ltd. has come up in appeal challenging the award dated 11.10.1988 passed by the III Addl. Motor Accidents Claims Tribunal in Greater Bombay at Bombay.

2. The respondent No. 1 herein is the claimant who made claim application to recover a compensation of Rs. 25,000 from Imatiaz Ahmed Mohd. Hanif (opponent No. 1 and owner of vehicle taxi No. MRP 4312) and Oriental Fire & General Insurance Co. Ltd. The claimant stated in the claim application that on 10.11.1981 when he was sleeping on a small platform close to a building by roadside near Deonar Abattoir, Govandi, the vehicle taxi No. MRP 4312 driven by opponent No. 1 was taken in reverse direction and due to negligent act, the said vehicle passed over the back of the claimant, as a result of which he sustained injuries. The opponent No. 1 remained absent and claim was contested by the insurer Oriental Fire & General Ins. Co. Ltd. The insurer raised the defence that the said taxi was not insured with them on the date of accident and, therefore, the insurer cannot be fastened with the liability. The Claims Tribunal after recording the evidence, held that the accident occurred due to rash and negligent act of the opponent No. 1. The Tribunal also held that vehicle was insured with Oriental Fire & General Insurance Co. Ltd. and accordingly, by the impugned

award directed the opponent No. 1 and the insurer to pay Rs. 18,000 to the claimant with 12 per cent interest per annum from the date of application till realisation.

3. Mr. S.S. Vidyarthi, learned counsel appearing for the appellant insurer contended that the vehicle was not insured with the appellant and, therefore, the award against the appellant is unsustainable. In this connection, he referred to the deposition of Rajiv Srinivas Mehta (witness No. 1 for the insurer).

4. The opponent No. 1 did not choose to appear before the Claims Tribunal and accordingly, claim application proceeded ex parte against him. The insurer set up the defence in the written statement that the offending vehicle was not insured with it. Confronted with this, the claimant has examined Vijay Ramesh Murkute (junior clerk in the office of R.T.O.) and also produced the certificate dated 26.4.1982 issued by R.T.O., Bombay stating therein that the vehicle No. MRP 4312 (offending vehicle) was insured with the Oriental Fire & General Insurance Co. Ltd. for the period from 12.2.81 to 11.2.1982. In rebuttal, the insurance company as indicated above, examined Rajiv Srinivas Mehta who was directed by the insurance company to investigate the insurance particulars of the offending vehicle No. MRP 4312. The Claims Tribunal did not believe the deposition of Rajiv Srinivas Mehta and relied upon the certificate of R.T.O. produced by the claimant showing that the concerned vehicle was insured with the Oriental Fire & General Insurance Co. Ltd. on the date of the accident. It may be observed that Rule 289 of the Bombay Motor Vehicles Rules, 1959, provides for production of certificate of insurance at the time of paying tax of motor vehicle. Upon perusal of Exh. 9, it is seen that the Regional Transport Officer, Bombay has intimated the claimant''s advocate that the concerned vehicle No. MRP 4312 was insured with the Oriental Fire & General Ins. Co. Ltd. for the period from 12.2.81 to 11.2.1982. Vijay Ramesh Murkute, witness No. 2 for the claimant produced the certified copy of C.B. & M.V. register of vehicle No. MRP 4312 which is marked Exh. 10. A perusal of the said extract which is duly certified by R.T.O., Bombay (East), shows that the tax of the vehicle for the period 1.7.1981 to 30.6.1982 was paid by the owner of the vehicle on 12.11.1981 and it is recorded therein that the vehicle was insured with the Oriental Fire & General Insurance Co. Ltd. for the period from 12.2.1981 to 11.2.1982. The said endorsement appears to have been made in compliance of Rule 289 of the Bombay Motor Vehicles Rules, 1959 since the owner paying tax on the vehicle is required to produce certificate of insurance at the time of payment of tax of motor vehicle. Thus, the record maintained by R.T.O. under law clearly shows that the concerned vehicle was insured with the Oriental Fire & General Insurance Co. Ltd. for the period from 12.2.1981 to 11.2.1982 when the accident took place on 10.11.1981. In other words, it is clearly seen from the record of R.T.O. that the vehicle was insured with the Oriental Fire & General Insurance Co. Ltd. on the relevant date. The oral evidence of Rajiv Srinivas Mehta produced by the insurer is not sufficient to rebut the documentary evidence produced by the claimant. The said witness has admitted that he has been working with the insurer for the last one year. The

said witness has only deposed about the enquiry made by him in connection with the insurance particulars of the concerned vehicle No. MRP 4312. He has produced three documents, viz., xerox copy of the policy given to him by Imatiaz, sale agreement between Imatiaz and Ladlekhan and the statement of Imatiaz Ahmed recorded by him on 22.3.1988, marked as X-1, X-2 and X-3 respectively. On the face of the documentary evidence, particularly, the record maintained by R.T.O. which shows that the concerned vehicle was insured with the Oriental Fire & General Insurance Co. Ltd. for the period from 12.2.1981 to 11.2.1982, the deposition of Rajiv Srinivas Mehta and the documents produced by him have rightly been not accepted by the Tribunal. Rajiv Srinivas Mehta in his deposition admitted that they maintain policy register and also register for cover note but the said policy register or register for cover note for relevant period was not produced before the court to show that no policy was issued in respect of the concerned vehicle by the insurer for the relevant period. He has also admitted in the cross-examination that he has not personally checked up the policy register nor checked the cover note register. In the circumstances, the deposition of Rajiv Srinivas Mehta and the documents produced by him are not of much help to the insurer appellant. The claimant has been able to prove that the concerned vehicle was insured with the appellant insurer for the relevant period.

5. In the circumstances, no interference is called for. First appeal is accordingly dismissed with no order as to costs.