

(1988) 09 BOM CK 0044

In the Bombay High Court

Case No : First Civil Appeal No. 91 of 1986

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mahableshwar Sinai Salelkar and Others

RESPONDENT

Date of Decision : 20-09-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1989) ACJ 425

Hon'ble Judges : G.D. Kamat, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : H.R. Bharne, for the Appellant; S. Kantak, M.S. Usgaonkar, J.P. Mulgaonkar and D.M. Dhond, for the Respondent

Judgement

C.S. Dharmadhikari, J.—This appeal is filed by the insurance company against the award delivered on 18th August, 1986, by the Motor Accidents Claims Tribunal, South Goa, at Margao.

2. An application for compensation was filed by Mahableshwar Sinai Salelkar, the first Respondent, u/s 110-A of the Motor Vehicles Act, 1939, on account of the damage sustained by his bus in a motor accident which took place on 23rd of May, 1982. The amount of compensation claimed was Rs. 99,540/ -. It appears to be an admitted position that the bus of Respondent No. 1, GDT 2440 was involved in an accident with the truck of Respondent No. 3, GDT 1087. The Appellant insurance company is a common insurance company for both these vehicles. The Respondent No. 1 received an amount of Rs. 60,210/ - towards the full settlement of the loss or damage caused through the accident to his motor vehicle. He also agreed to give discharge to the insurance company in full and final settlement of all claims present or future, arising directly or indirectly in respect of the said accident. However, since the damage caused was much more than Rs. 60,210/ - the Respondent No. 1 claimed further damages from the Respondent No. 3, as well as the Appellant insurance company, which, as already observed, was also an insurance company for the vehicle belonging to the

Respondent No. 3. Parties adduced evidence before the Tribunal, and after appreciating all the evidence on record, the Tribunal came to the conclusion that the original Petitioner/ Respondent No. 1 was entitled to additional compensation to the tune of Rs. 89,540/ -. It is this finding of the Tribunal as well as the award, which is challenged in this appeal.

3. Mr. H.R. Bharne, the learned Counsel appearing for the Appellant, contended before us that, in view of the settlement between the parties, the Respondent No. 1 was estopped from claiming anything more than Rs. 60,210/ - and, therefore, the present award is illegal. In substance, it is his contention that, by applying the principle of estoppel, the learned Presiding Officer of the Tribunal should have dismissed the claim made by the original Petitioner/the Respondent No. 1.

4. After the matter was heard for some time, the Respondent No. 1, Mahableshwar Sinai Salelkar, filed a purshis before us reducing claim to Rs. 50,000/ - as compensation for damages to the bus, towards the principal and has claimed interest from the date of the claim, i.e., 9th October, 1982, till the date of the deposit of the amount in this hon"ble court on 30th December, 1986. In our view, the offer made in the purshis is more than fair. It cannot be forgotten that the settlement was between the claimant and the insurance company where the claim of the claimant was restricted to his insurer and it has nothing to do with the claim he had made in the claim petition from the Respondent No. 3 and his insurance company. That the Appellant happens to be the insurance company for both, is merely a coincidence, but that will not change the colour of the controversy. Further, it is pertinent to note that the plea of estoppel was not raised before the trial court. The plea of estoppel does not involve pure question of law, but in any case, it is a mixed question of law and fact. Since it was not pleaded, the Respondents had no opportunity to meet it, and obviously therefore, no issue was framed. Such a plea which involves mixed questions of law and fact cannot be raised for the first time in appeal, more so, in the absence of any foundation or material in that behalf. As already observed, by a settlement dated 24.4.1986 as incorporated in the receipt for Rs. 60,210/ - claimant had not given up his claim against Respondent No. 3, the truck owner. Appellant insurance company is held responsible in view of its liability to third parties in terms of insurance policy.

5. It was then contended that the liability of the insurance company could not be for an amount which is more than Rs. 50,000/ -. Obviously, the contention will not survive in view of the purshis filed before us, reducing the claim to Rs. 50,000/ -. These were the only contentions raised and argued before us.

6. In the result, therefore, on the basis of the purshis filed, the appeal is partly allowed. The compensation awarded by the Motor Accidents Claims Tribunal is reduced to Rs. 50,000/ - instead of Rs. 89,540/ -. The Appellant insurance company as well as the Respondent No. 3 will be jointly and severally responsible to pay the said amount with interest at the rate of 6 per cent per annum, from

the date of the claim, i.e., 29th October, 1982, to 30th December, 1986, when the Appellant insurance company had deposited this amount in this Court. The Respondent No. 1, namely, Mahableshwar Sinai Salelkar, will be at liberty to withdraw the amount deposited in this Court. The Appellant insurance company is granted six weeks" time to deposit the amount of interest. On deposit of the amount of interest in the court, the Respondent No. 1 will also be at liberty to withdraw the same. However, in the circumstances of the case, there will be no order as to costs in this appeal.