

(2012) 10 BOM CK 0177

In the Bombay High Court

Case No : First Appeal No. 1043 of 2012

Swayambhu Construction Pvt. Ltd. Konark Apartments,
Dhantoli, Nagpur

APPELLANT

Vs

Dhrupada Watekar, Pandurang Watekar, Both and United
India Insurance Company Limited, Dr. Bhongade Bhavan,
Main Road, Wardha

RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Citation : (2012) 10 BOM CK 0177

Hon'ble Judges : M.N. Gilani, J

Bench : Single Bench

Advocate : P.P. Kotwal, for the Appellant; Solao h/f N.S. Talmale, advocate for respondent no. 1 to 3 and Mr. M.R. Kalar, advocate, for the Respondent

Judgement

M.N. Gilani, J.—Heard both sides. Admit. With the consent of both the parties, this appeal is heard finally.

2. The only question that has cropped up in this appeal is, the appellant not getting opportunity of being heard while the Claim Petition No. 43/2007, was decided. It is submitted that, there was death of mother of the appellant and because of which he could not attend the proceedings. Further contention is that vehicle was insured with the respondent no. 4. However, the Tribunal after holding that there was breach of terms of insurance policy saddled the entire liability on him.

3. Considering the cause for non appearance of the appellant before the Tribunal and also the fact that appellant was deprived of an opportunity of leading evidence, particularly to rebut the defence raised by the respondent no. 3, in the interest of justice, the award exonerating respondent no. 4 and saddling the entire liability on the appellant, will have to be set aside.

4. It is clarified that issue before the Tribunal would be whether there was breach

of term of insurance policy. Tribunal need not go into other issues like income of the deceased, loss of dependency, multiplier applied and total amount of compensation arrived at. In other words, the judgment and award is set aside to the extent of issue of breach of term of insurance policy.

5. The appeal succeeds partly. The judgment and award, to the extent of exonerating respondent no. 4 herein [original claimant no. 3] and saddling entire liability upon the appellant is set aside. Rest of the award i.e. fixing the amount of compensation etc is affirmed. The matter is remitted back to the Tribunal at Bhandara for decision only on the issue of breach of terms of insurance policy, to be decided after giving an opportunity to the parties. The appellant shall be at liberty to file his written statement.

6. The appellant has deposited entire amount under award with the Registry of this Court. The amount so deposited be transmitted to the Motor Accident Claims Tribunal, Bhandara with a direction to disburse it amongst the claimants in terms of the award. In the event the appellant succeeds he would be entitled to recover the said amount from the respondent no. 4. Parties shall appear before the Motor Accident Claims Tribunal, Bhandara on 26.12.2012. On receipt of the same, the Tribunal shall decide the petition as expeditiously as possible and in any event within six months from the date of receipt of the records. No order as to costs.