Presented on : 19/12/2017
Registered on : 03/11/2016
Decided on : 22/10/2021
Duration: 04Y-11M-19Ds
Exh.

IN THE COURT OF EXTRA JT.DISTRICT & ADDL.SESSIONS JUDGE, THANE
(AS MEMBER MACT)
(CNR NO. MHTH010074622016)
M.AC.P. NO.660/2016

(***before Shri M.M.Walimohammed***)

1] Smt. Susheela Anil Yadav,
Aged 27 years, Occ: Housewife,

2] Miss. Upasana Anil Yadav
Aged 06 years, Occu: Education

3] Miss. Madhu Anil Yadav,
Aged 04 years, Occu: Education

4] Mss. Rashee Anil Yadav
Aged 02 years, Occu: Education

5] Smt. Kamalidevi Ramraj Yadav.
Aged 52 uears, Occ: Housewife,

6] Miss. Anitadevi Ramraj Yadav,
Aged 18 years, Occ: Education,

7] Shri Munikumar Ramraj Yadav,
Aged 20 years, Occ: Education.

All R/at.Nimich Tehsil Phulpur,
District:Banaras, State Utter Pradesh .... Applicants.

V/s.

1] Shri Prakash Kashinath Yadav,
Residing at:A-17/201, Sector No.2,
Shanti Nagar,
High School Mira Bhayander,
Mira Road, Thane

2] Iffco Tokio General Insurance Co. Ltd.,
Solitaire Apt. Eastern Express Highway,
Near RTO Office, Thane .... Opponents

Petition U/s. 166 of M.V.Act, 1988.
Mr.S.M.Pawar - Adv. For applicants.
Mr. K.B.Patil- Adv. For opponent no.1.
Alka Phadtare -Adv. for opponent no.2.

JUDGMENT
(Delivered on 22/11/2021)

This is the petition u/s. 166 of M.V.Act by wife, daughters, mother, sister and brother of deceased Anil Ramraj Yadav.

2] In brief, the claimants contended that on 9/5/2017 around 3:45 a.m. to 6:00 a.m. the deceased was proceeding by walk towards sector No.6 and was crossing the road. He reached opposite Gurukrupa building, the vehicle No. MH-04/BU-203 (hereinafter referred to as offending vehicle), came in high speed, in negligent manner and dashed to him. He sustained injuries and was removed to Mira Bhyander Municipal Corporation hospital. He died there. The motor driver left the spot.

3] It is contended that the accident took place due to negligent driving of the said offending vehicle driver which was owned by opponent no.1 and insured with opponent no.2 from 12/5/2017 to 11/5/2018. The Naya Nagar police station registered the Crime No.I-122/2017 U/s. 279, 338 and 304A of I.P.C. and U/s.134 and 184 of M.V. Act against the offending vehicle driver.

4] It is contended that deceased was of 32 years of age and earning more than Rs.12,000/- per month by doing private job. The claimants be granted compensation under different heads.

5] The opponent no.1 resisted the petition by filing written statement at Exh.39. It is submitted that registration of offending vehicle number is of water tanker and not truck. The opponent no.1 and employee was not involved in the accident and therefore, they are not liable to pay the compensation. In the Cctv footage the accident has not taken place by water tanker. His vehicle is unnecessarily dragged. It is submitted that gravity of accident would have if water tanker having weight of 6200, kgs. empty i.e. without water and or 16200 kgs. (full) would have smashed the entire body. The contents about negligent act etc. are denied. The type of vehicle does not match. There is no accident caused ,occurred by vehicle of opponent no.1. The FIR does not disclose the name of opponent and it is therefore, prayed to dismissed the petition.

6] The opponent no.2 resisted the petition by filing written statement at Exh. 16. It is submitted that no policy has been issued to the offending vehicle, covering the date of accident. The insurance company has lodged the complaint to concerned police station with the copy to RTO office. The insurer is falsely implicated. The provisions of Motor Vehicle Act are not complied with. The offending vehicle was not involved.

7] It is submitted that policy was issued, showing the period from 12/5/2017 to 11/5/2018 and on verification it is found that date of accident i.e. 9/5/2017 does not cover the policy. The false document is filed.

8] It is submitted that driver of the offending vehicle was not holding valid effective licence and there is breach of policy. The offending vehicle was used without fitness and permit and therefore, insurer is not liable to pay the compensation. The other contents about the involvement of vehicle negligent driving and claim is denied. It is submitted that to grab the compensation the petition is filed, it be dismissed.

9] Heard both counsels and gone through the written notes of argument filed by applicant Exh.65.

10] The issues were framed at Exh.17. I record my findings for the reasons mentioned as under:-

	ISSUES	FINDINGS
1	Whether the claimants prove that deceased Anil Ramraj Yadav died in vehicular accident on 9/5/2017 caused by vehicle No. MH-04/BU-0203 by rash and negligent act of its driver?	In the affirmative.
2	Whether there is breach of terms and conditions of insurance policy and / or policy does not cover the date of accident?	In the Negative regarding breach policy is not valid on the date of accident.
3	Whether claimants are entitled for compensation as claimed? If yes, to what extent?	Yes,Rs.12,22,000/- from opponent no. 1 only.
4	What award?	Petition is allowed and the case is dismissed against the opponent no.2.

REASONS

ISSUE NO.2:

11] The insurer has specifically pleaded that no policy was issued to the offending vehicle covering the date of accident. It has filed complaint with copy to RTO office. It is submitted that there is false implication. It is also contended that policy was issued for the period from 12/4/2017 to 11/4/2018 and the date of accident is 9/5/2017. It is not covering on the date of accident. The breach of policy is alleged as driver was not holding valid driving licence, fitness and permit.

12] In this context, the evidence of Pradip Mohan shows that he is serving as legal manager with opponent no.2 since last ten years. The offending vehicle was not issued policy. The verification of record, policy No. 29181993 was issued for 11/4/2017 to 13/4/2018 and the date of accident is not covered, no premium was received of offending vehicle. They have filed the complaint to concerned police and informed to RTO office.

13] He stated that extract of premium register from 11/4/17 to 13/4/17 is filed and the offending vehicle is not insured. He filed letter of authority Exh.51, certificate Exh.65B of Evidence Act Exh.52, copy of policy Exh.53, copy of premium register Exh.54, copy of complaint to policy Exh.55 and original postal receipts collectively marked at Exh.56.

14] His evidence shows that extract of premium register is issued from Andheri Office and policy Exh.53 was issued through agent. He was unable to say whether agent is still serving or not. The premium register does not contain entry of policy of which cheque is dishonoured. He denied that premium was received. It may be seen that name of agent in the copy of policy Exh.44 and 53 is the same. However, he denied that after acceptance of amount, the policy is issued.

15] The copy of policy Exh.53 shows the number 1B2H6XFM for the period from 12/5/2017 to 11/5/2018. The accident has taken place on 9/5/2017. The extract of premium register Exh.54 reveals that no premium was received. It would not be necessary to file the entire premium register which is voluminous or bulky. The far advance payment as alleged of premium appears illogical.

16] There appears copy of complaint to Nayanagar police station about fake/forged policy and postal receipt Exh.56 collectively. The result of police complaint is not known as may be seen from the evidence of witness of the insurer. The evidence discussed above reveals that efforts were taken.

17] The submission that there was no valid licence, fitness and permit, there appears no satisfactory and believable evidence. Therefore, it need not be discussed in detail.

18] The opponent no.1 filed evidence of Prakash Yadav. Who stated that FIR does not disclose his name neither description of truck. The registration number of the vehicle is of water tanker and not truck. He is unnecessarily dragged. He denied the contents.

19] He stated that cctv footage of adjoining shop , his water tanker is not seen. The FIR and other documents shows that accident occurred due to rash driving of the truck and not water tanker. The water tanker is weighing 6200 kgs (empty) and

16200 kgs (full with water) and body would have been smashed.

20] He stated that he was having valid insurance with opponent no.2. He filed copy of insurance policy Exh.44, RC book Exh.45.

21] During the cross-examination on behalf of the claimant it shows that he is having 4 to 5 water tankers and tanker No. MH-04 / BU-0203 was of blue colour. This tanker was parked on 9/5/2017 and Rama Shanker was driver. He denied that driver gave dash to deceased Anil Jadhav. He admitted that he was arrested and chargesheet is filed. He did not challenge the prosecution. His vehicle was insured for three years through agent Avdesh Pandey.

22] During the further cross-examination by opponent no.2, he stated that he was issued cover note which he has given to police station. He denied that he filed false policy. He admitted that company has issued notice to him.

23] It appears that policy was issued from 12/5/2017 to 11/5/2018 Exh.44 and the opponent no.1 is the owner of vehicle No. MH-04/BU-0203.

24] The pavitol question remains whether offending vehicle was validly insured on the date of accident and policy is filed on record is covering risk.

25] At the cost of repetition, there is copy of policy Exh.22 filed by the applicant which is xerox and stamp and was put by police. It shows period from 12/5/2017 to 11/5/2018. The accident has taken place on 9/5/2917 undisputedly. The question arises as to who was custodian of this copy of policy and how it reached to the police. Primarily, it may be the insured i.e. opponent no.1.

26] The second policy is filed at Exh.44 by opponent no.1, which shows the period from 12/5/2017 to 11/5/2018. If the opponent was having this policy, he is the main and custodian of the document. He did not produce it to police. Therefore, U/s. 102 of the Indian Evidence Act, the party must fail if he has not given satisfactorily and believable evidence. In this context, insurer could not be found fault for the simple reason that valid insurance is to be proved basically by claimant.

27] The third copy of policy is filed at Exh.53 by opponent no.2 showing the period from 12/5/2017 to 11/5/2018. The insurer has come with specific case that neither premium was received nor valid policy was issued on the date of accident and there is complaint and notice to the insured i.e. opponent no.1 which he has received and admittedly as per his evidence discussed above.

28] The cumulative effect of the discussion made in the foregoing leads me to conclude this aspect that offending vehicle was not insured on the date of accident and therefore no liability can be foisted upon the insurer. It would be the owner of the vehicle who would be liable. With this reason, the issue is answered in the negative regarding breach and non existence of policy on the date of accident.

ISSUE NOS. 1,3 and 4:

29] On behalf claimants, witness Sushila reiterated the facts contended in the petition, in her affidavit and for the sake of brevity I am not repeating. She filed copy of FIR Exh.19, copy of advance death certificate Exh.20, copy of post mortem report Exh.21, copy of policy Exh.22.

30] The insurer put up that policy is fake and vehicle was not insured. The copy of FIR and post mortem report shows that offending vehicle is involved in the accident and death culminated in the vehicular accident.

31] The other evidence is of Rajeshkumar Singh, shows that he is running business of electric equipment maintenance since 20 years at Mira Road, Thane in the name of Papu Electrical Services. The deceased was serving with him since last 12 years and he was paying Rs.10000/- as salary. He is not having licence under Shop & Establishment and stated that turnover of business may be filed. He admitted that deceased was not permanent. He has not brought voucher, salary slip and he has no document to show that he is running business.

32] The claimant examined employer. The salary of Rs.8000/- per month would be just to be considered in the absence of other documents.

33] The fact remains that opponent no.1 is owner of the offending vehicle and xerox copy of policy is filed with stamp of police station found unbelievable and not covering the date of accident. Therefore, he is to be held liable to pay the compensation.

34] The calculation comes to Rs.8000 x 12 = 96,000/-. His age is mentioned 32 years in petition. The P.M. notes Exh.41 mentions age 35 years. There appears no challenged to this situation. The multiplier of 16 would be applicable. The 1/4th deduction had deceased been alive would take the remainder Rs.96,000 – 24,000 = 72,000/-. The further calculation comes to Rs.72,000 x 16 = 11,52,000/-.

35] The learned counsel for applicants relied in Mangla Ram V/s. The Oriental Insurance Co. Ltd., and others, 2018 (2)

T.A.C. 337 (S.C.). There was appeal by the claimant against the judgment of Hon'ble High Court which set aside the order of MACT granting compensation and enhancement was asked. It was injury case and there was amputation of right leg. The point of negligent was considered and debatable issue of factum of involvement of jeep driven by opponent. The observations are:

> "This conclusion is base on surmises and conjectures and also in disregard of the relevant fact that the vehicle was seized by the police after investigation, only after one month from the date of the accident and the possibility of the same having been repaired in the meantime could not be ruled out. In other words, the reasons which weighed with the High Court for reversing the finding of fact recorded by the Tribunal. Upon holistic analysis of the entire evidence, about the involvement of jeep No. RST-4701 in the accident, cannot be countenanced. For, those reasons do not affect the other whelming circumstances and evidence which has come on record and commended to the Tribunal about the involvement of the subject jeep in the accident in question. This being the main edifice, for which the High Court allowed the appeal preferred by respondent Nos. 2 and 3, it must necessarily follow that the finding of fact recorded by the Tribunal on the factum of involvement of jeep No. RST-4701 in the accident in question will have to be restored for reasons noted hitherto."

36] The evidence shows that neither there is voucher nor salary slip nor other documentary evidence. The employer admitted that he has no record about the permanency of job. Therefore, it would not be just and proper to grant future prospect.

37] A useful reference may be made of the Judgment of Hon'ble Apex Court in **National Insurance Company V/s. Pranay Sethi & Others,AIR, 2017, S.C. 5157,** the observations are:-

> "Reasonable figures under conventional heads, namely, the loss of estate, for loss of consortium, and funeral expenses should be Rs.15000/- Rs.40,000/- and Rs.15000/- respectively."
> 11,52,000

38] Thus, the total calculation would be Rs. 11,52,000 + 70,000 = 12,22,000/-. This would be the just and reasonable compensation. With this, issues are answered in the affirmative partly. Hence, the following order is passed.

ORDER

1] Petition is allowed partly.

2] The opponent no.1 do pay to the applicants the compensation amount of Rs. 12,22,000/- with interest at the rate of 7% per annum from the date petition within two months failing which 8%

interest is to be levied till realization of the said amount subject to deduction of NFL amount, if any.

3] On realization of compensation the amount of Rs.50,000/-(Rs.Fifty thousand only) each be kept in fixed deposit in the name of applicants Upasana, Madhu and Rashee in any Nationalized Bank till they attain the age of majority under the guardianship of their mother Susheela and she will be entitled to receive quarterly rests on the said deposit amount and from remaining amount Rs.50,000/-(Rs. Fifty Thousand only) each be kept in any Nationalized Bank in the name of Susheela, Anitadevi and Munilkumar for the period of three years and they are entitled to quarterly rests.

4] From the remaining amount Rs.7,00,000/-(Rs.Seven Lakhs only) to applicant Susheela, Rs.50,000/ each to Anitadevi and Munilkumar and the remaining amount to Smt.Kamalidevi.

5] The amount be paid by account payee cheque with proportionate interest on due verification and identification, as per rule.

6] Opponent No.1 do pay costs and he along with opponent no.2 do bear their own.

7] The deficit court fee be recovered as per rule.

8] Award be drawn up accordingly.

Thane
Dated:22/11/2021

(M.M.Walimohammed)
Extra Jt. Dist. Judge & Addl. Sessions Judge as
Member M.A.C.T, Thane