IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL APPLICATION NO. 7053 OF 2015
with
FIRST APPEAL STAMP NO. 14234 OF 2015
with
CIVIL APPLICATION NO. 7054 OF 2015

United India Insurance Company Ltd., Through its Divisional Manager, Divisional Office No.1, Aurangabad **Applicant**

V E R S U S

Milind s/o Uttamrao Waghmare and another **Respondents**

Mr. S.R. Bodade, Advocate for the applicant/appellant

CORAM : A. V. NIRGUDE, J.

DATE : 17th August, 2015

PER COURT :

1. Heard.

2. This Appeal is filed along with application for condonation of delay. I heard the learned counsel for the applicant on the admission of the Appeal without service of notice of application seeking condonation of delay on the respondents, as I do not consider it necessary. The Appeal itself does not

deserve any consideration of this Court. It deserves to be dismissed. Therefore, as a matter of convenience, I allow the application seeking condonation of delay bearing Civil Application No.7053 of 2015 and take up the Appeal for final disposal.

3. ***The facts, as narrated by the learned counsel for the appellant, in short, can be stated as under***:-

The respondent/claimant was riding his motorcycle on 13th November, 2011. A Bus came from opposite direction and collided on him. He sustained grievous injuries and became permanently disabled person. He filed petition for compensation against the owner and insurer of the Bus. He also moved an application under Section 140 of the Motor Vehicles Act for 'no fault liability'. The Insurance Company took up a stand that though they had issued insurance policy in favour of owner of the bus, the cheque which was handed over to them for premium failed and so they are not liable to pay the amount. The learned Member of the Tribunal noticed that this defence is not viable for two reasons; first, no notice of failure of the cheque was given to the insured, and, secondly; the insurer is under statutory liability to protect the insured.

4. Learned counsel for the appellant made submission that in view of Section 64-VB of the Insurance Act, 1938, the Insurance Company was not liable to pay any amount. He placed reliance on the judgment of the Supreme Court in the case of ***National Insurance Co. Ltd. Versus Seema Malhotra and others***, reported in ***AIR 2001 Supreme Court 1197***. The learned counsel for the appellant appears to be oblivious of provisions of Section 147 of the Motor Vehicles Act specially sub-Section [5] and Section 149 specially sub-Section [1] of the Motor Vehicles Act, 1988. The Insurance Policy was issued and became voidable because failure of cheque. There is no doubt about it, but sub-Section [1] of section 149 read with sub-section [5] of Section 147 takes care of such situation to impose duty on the insurer to satisfy Award against insured in respect of 'third party' risk. On the face of it, there cannot be any dispute that the claim arose from third party risk. The policy was issued and became voidable; even assuming that the policy was cancelled by following steps like issuance of notice etc., sub-Section [1] of Section 149 of the Motor Vehicles Act still compels the insurance company to satisfy the Award as if it is the judgment debtor. Sub-section [5] of Section 147 of the Act nullifies the submissions based on Section 64-VB of the Insurance Act, 1938. Sub-Section [5] of the Act starts with non-obstinate clause. The appeal itself was

unnecessary exercise. The Appeal stands dismissed.

In view of above, Civil Application No. 7054 OF 2015 for stay stands disposed of.

(A.V. NIRGUDE, J.)

SRM/17/8/15