**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 643 OF 2015

The Oriental Insurance Co. Ltd.
Br. Jalgaon through Divisional,
Aurangabad ...Appellant

versus

Yashodabai Gopal Chaudhari & ors ...Respondents

.....

Mr. A.G. Kanade, Advocate for appellant
Mr. B.S. Deshmukh, Advocate for respondent Nos. 1 & 2

.....

CORAM : N.W. SAMBRE, J.

DATE : 6th JULY, 2015

ORAL ORDER :

Heard Mr. Kanade, learned Counsel for the appellant-Insurance Company.

2. The appeal is by the Insurance Company under Section 173 of the Motor Vehicles Act questioning the award dated 11/03/2014 delivered by Motor Accident Claims Tribunal, Jalgaon in Motor Accident Claims Petition No. 112 of 2007 below Exhibit-59.

3. The claimants are the dependents of one Sanjay, who at the relevant time, was riding on motor cycle No. GJ,GG 5296, which

was dashed from behind back by the truck bearing registration No. GJ 03, U 5689, which was insured with the appellant.

4. By the award, the tribunal has directed the appellant herein to pay amount of Rs.5,70,000/- to the claimants. As such, present appeal.

5. Mr. Kanade, learned Counsel for the appellant, while making request for remand of the matter, would urge that the defence that was set up by present appellant was in regard to cancellation of policy in question for non payment of premium. In support of this contention, he would urge that already the basis to that defence is raised by filing written statement and has sought to place reliance upon the communication dated 14/06/2005 issued to the vehicle owner. According to him, once cheque issued towards premium was dishonoured, the Insurance Company is not liable to pay compensation.

6. Mr. Deshmukh, learned Counsel for respondents-claimants would urge that the tribunal has evaluated the said evidence, particularly copy of communication dated 14/06/2005. According to him, since the said fact was not established by the Insurance Company, the claim petition came to be allowed.

7. Upon rival submissions of the parties, it is required to be noted that the tribunal has proceeded to analyze the issue qua for proving of accident in question and death of Sanjay, son of original claimants-respondents herein.

8. Said Sanjay was having wholesale vegetable business and died at the age of 27 years.

9. So far as the issue as regards cancellation of the policy is concerned, admittedly present appellant Insurance Company has brought on record the photostat copy of communication dated 14/06/2005. The accident in question took place on 28/09/2005. Apart from above, the fact remains that what was produced on record for demonstrating the cancellation of the policy in question for non payment of premium was a letter dated 14/06/2005 through its photo copy. Admittedly, original of the same was neither produced nor any witness in support of the said document was examined by the present appellant.

10. In view of the fact that no evidence (oral or documentary in original form) was produced in support of the claim for cancellation of policy in question, the prayer that was made and as

canvassed by learned Counsel for the appellant, does not hold any substance and as such, is rejected.

11. In my opinion, the tribunal has rightly proceeded to evaluate the claim brought before it based on the evidence.

12. As such, no case for interference is made out. The appeal fails, stands dismissed.

13. In view of dismissal of the first appeal, civil application for stay does not survive and same is disposed of.

[**N.W. SAMBRE, J.]**

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