IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL (ST) NO.20819 OF 2014

ICICI Lombard General Insurance
Company Ltd. Through its Legal Officer
Mr. Rahul Sanap,
Age: 29 years, Occ: Service,
R/o. C/o. ICICI Lombard General Insurance
Company Ltd., Alaknanda, 1st Floor,
Adalat road, Aurangabad. ...Appellant

versus

1. Rajendra Daulatsing Bhate,
Age: 33 years, Occ: Labourer,
R/o. Takali Mali,
Tq. & Dist. Aurangabad.

2. Shankar Deorao Maid,
Age: 26 years, Occ: Driver,
R/o. Daregaon, Tq. Paithan,
Dist. Aurangabad.

...Respondents

WITH

CIVIL APPLICATION NO.4588 OF 2015
IN
FIRST APPEAL (ST) NO.20819 OF 2014

Rajendra Daulatsing Bhate. ...Applicant

versus

ICICI Lombard General Insurance
Company Ltd. Through its Legal Officer
Mr. Rahul Sanap,
Age: 29 years, Occ: Service,
R/o. C/o. ICICI Lombard General Insurance
Company Ltd., Alaknanda, 1st Floor,
Adalat road, Aurangabad & anr. ...Respondents

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Mr. S.V. Natu, Advocate h/f Mr. S.S. Patil, Advocate for appellant.
Ms. Anuradha S. Mantri, Advocate for applicant in C.A. No.4588/2015 and for respondent No.1 in appeal.

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CORAM : N.W. SAMBRE, J.

DATE : 18TH APRIL, 2015

ORAL ORDER :

The appeal is taken out for final disposal at admission stage, with the consent of the parties.

2. The Insurance Company has questioned the findings recorded by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No. 490 of 2011. It was brought before the Tribunal while claiming compensation of Rs. 3,00,000/- under Section 166 of the Motor Vehicles Act that the accident took place on 24/12/2010 at 9-00 a.m. when the claimant was riding motor cycle bearing Registration No. MH-20-BR-3121, which dashed against the motor cycle bearing Registration No. MH-20-BC-2687. It was claimed that the claimant was admitted in the hospital from 24/12/2010 to 06/01/2011 and incurred expenses of Rs.1,50,000/- towards medical treatment. It was also claimed that as a result of injuries sustained by him, partial loss to his memory was noticed and also lost his

performance capacity, as he was in private service. The tribunal ordered payment of compensation of Rs.1,21,270/- by an order dated 29/03/2014. As such, present appeal.

3. Learned Counsel for the appellant Insurance Company has raised two-fold contentions; (a) that there was breach of policy condition as the driver of the vehicle was not holding valid driving licence, and (b) that the Doctor, who has certified disability/loss of performing capacity, was not neuro-physician, and he was expert in orthopedics.

4. In view of above, following point raised for consideration;

> Whether the learned M.A.C.T. has committed an error in allowing the claim petition though there was violation of policy conditions and the certificate was not issued by the competent Doctor?

5. With the assistance of learned Counsel for the appellant, I have gone through the observations made by learned tribunal. Learned tribunal, after framing issues for consideration, noticed that after the accident took place, Crime No. 37 of 2010 for the offence punishable under Section 279 and 337 of the Indian Penal Code came to be registered. Copies of F.I.R., Form AA, and spot

panchnama are at Exhibits-26, 25 and 27. The tribunal recorded the evidence of witnesses and the Insurance Company-appellant examined Praveen Gangadhar Igave at Exhibit-47 and produced insurance policy at Exhibit-29.

6. Though the Insurance Company has come out with the case of breach of policy conditions i.e. driver of the vehicle was not holding valid licence, it is settled law that in such case, burden to establish the said fact lies on the Insurance Company. The Insurance Company, in support of the said claim, examined its officer, who submitted that he has made inquiry with R.T.O. office about the said issue. However, no cogent evidence is brought on record in the form of certificate from the R.T.O. so as to demonstrate the driver of insured was not holding driving licence. In view of above, no interference is called for. The tribunal, so also this Court is of the opinion that the said fact is not established by the appellant by discharging its burden.

7. The second contention of the Insurance Company that Dr. Jaiswal, who has examined the claimant Rajendra and certified permanent disability to the extent of 20% was not neuro-physician, and he was Ortho-pedician.

8. It is not in dispute that the disability certificate at Exhibit-37 was proved by Dr. Jaiswal vide Exhibit-36, who is Ortho-pedician, as is submitted by the appellant. It is not brought on record that the said Doctor was under statute was disqualified from deposing or certifying the disability. This Court must take judicial note of the fact that said Doctor was holding basic qualification of M.B.B.S. and P.G. in Orthopedic. In my opinion, the said Doctor was justified disability certificate and deposing in support thereof.

9. In view of above, no case for interference is made out. The appeal lacks merit, stands dismissed.

10. Consequently, civil application for stay is disposed of.

11. In view of dismissal of first appeal, the civil application for withdrawal of amount stands granted.

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

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