IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3858 OF 2015

HDFC Ergo General Insurance Co. Ltd. .. Petitioner
vs.
Pratibha A. Umranikar & ors. .. Respondents

Mr. A.P. Kulkarni a/w. Mr. Manoj Badgujar for the Petitioner.
Mr. Sushil Nimbalkar i/b Kalyani Pathak for Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.
DATE : 7 May, 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition challenges the order dated 18 November 2014, by which the District Judge-3, Pune (MACT) has dismissed the petitioner's application at Exhibit-53 seeking leave to amend written statement to Claim Petition No. 390 of 2010.

3] The reason, as stated by the learned District Judge for rejection of leave to amend the written statement is that such leave was applied for after the trial had commenced and further, the amendment if allowed, would result in withdrawal of admission to the effect that the vehicle which was involved in the accident on 15 November 2009 was covered by valid insurance policy issued by the petitioner - insurance company.

4] Having heard the learned counsel for the parties and on the peculiar facts and circumstances of the present case, the impugned order shall have to be set aside and leave be granted to the petitioner to amend the written statement subject to payment of costs. This is because, there is no dispute in the present case that the accident in question took place on 15 November 2009. The insurance policy, on the basis of which the initial written statement was filed by the petitioner admitting coverage, is dated 23 November 2009. However, the same contains an endorsement that the period of insurance commences from 26 October 2009. In effect therefore, the insurance policy in question, is purported to have been made effective from a retrospective date.

5] In the application seeking leave to amend, the petitioner has stated that internal inquiries were held in the matter and it has been *prima-facie* revealed that the insurance policy was fraudulently procured. This is hardly an occasion to go into the correctness or otherwise of such findings. Nevertheless, such aspect is relevant in the matter of determination of diligence on the part of the petitioner, particularly since leave to amend was applied for after the commencement of the trial. For the purposes of grant of leave to amend, however, the circumstance that the accident took place on 15 November 2009 and the insurance policy was issued on 23 November 2009 is by itself sufficient to permit the petitioner to explain the so called admission and the circumstance in which the same came to be made in the written statement as originally filed.

6] Learned counsel for the respondents has placed reliance upon the decision of the Hon'ble Supreme Court in case of *Modi Spinning & Weaving Mills Co. Ltd. vs. Ladha Ram & Co. - AIR 1977 SC 680* to submit that amendment which seeks to withdraw admissions, ought not to be permitted. However, it is settled position in law that admission can always be explained and if, the amendment is primarily for the purposes of explaining the admission or the circumstance in which the same cam to be made, then ordinarily, such amendment should not be disallowed.

7] Looking to the peculiar circumstances of the present case, including *inter alia* that accident took place on 15 November 2009, the insurance policy was issued on 23 November 2009, the status of the parties, i.e., their being officers of the certain insurance companies, it cannot be said that this is a case where the petitioner should be deprived of an opportunity to amend their written statement, even though, the trial has commenced.

8] In so far as prejudice to the claimants are concerned, the same cannot be altogether ruled out. However, such prejudice is compensable by costs. Further, even if it is ultimately held that the vehicle in-question had no insurance coverage on the date of the accident, it is not as if, the claimants would be left without any remedy, insofar as the owner/driver of the vehicle in-question is concerned. The statement that necessary instruction had been issued by the petitioner to their own advocate to clarify the position in the written statement as originally filed, also cannot be ignored. It is now stated that the said advocate has also been removed from the panel of advocates who appear for the petitioner company.

9] In the aforesaid circumstances, the impugned order dated 18 November 2014 is set aside. The petitioner's application at Exhibit-53 is allowed. Necessary amendment to be carried out within a period of four weeks from today. This is all subject to the petitioner's paying costs of Rs.30,000/- (Rs. Thirty Thousand only) to the claimants, i.e., respondent Nos.1 to 3 herein. Such costs may be either directly paid to the said respondent or deposited in the District Court, where from, the said respondents would be at liberty to withdraw the same unconditionally.

10] If, as a result of the amendment to the written statement, the respondents seek to lead additional evidence, the District Judge, to permit them to do so.

11] Further, considering that the claimant was 28 years age on the date of his unfortunate demises, the District Judge is directed to dispose of the Claim Petition No. 390 of 2010, as expeditiously as possible and in any case within a period of six months from today.

12] In case, costs are not paid/deposited, then this petition shall deem to have been dismissed.

13] Rule is made absolute to the aforesaid extent.

14] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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