

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO.2831 OF 2014

IN

FIRST APPEAL ST. NO. 8498 OF 2014.

(TATA AIG GENERAL INSURANCE CO.LTD.....VS..VASUDEO DEOJI WAKADE & ORS.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 23, 2015.

Heard Mr. H.N. Verma, learned advocate for the applicant/ appellant and Mr. N.R. Bhisikar, learned advocate for respondent Nos. 1 and 2. None appears for respondent No.3.

For the reasons stated in the application and considering the facts of the case, delay in filing the appeal is condoned.

The Civil Application is allowed.

FIRST APPEAL ST.NO. 8498/2014.

The appellant Insurance Company has challenged the award passed by Motor Accident Claims Tribunal allowing the claim petition filed by respondent Nos. 1 and 2. The submission on behalf of the appellant-Insurance Company is that the appellant Insurance Company was not given opportunity to lead evidence and defend its case and the Tribunal has passed the judgment immediately after recording evidence of the witnesses examined on behalf of respondent Nos. 1 and 2 -claimants.

Mr. Bhisikar, learned advocate for respondent Nos. 1 and 2 does not dispute this factual aspect.

The submission made on behalf of the appellant-Insurance Company and accepted by respondent Nos. 1 and 2 are fortified from the copy of Roznama dated 24th June, 2014 filed by the appellant on record. As the appellant-Insurance Company is deprived of the opportunity of leading evidence to defend its case, the impugned order cannot be sustained. Hence, the following order :

ORDER

- i) The award passed by Motor Accident Claims Tribunal-4, Nagpur in Special Claim Petition No. 20 of 2010 on 24th June, 2013 is set aside.
- ii) The matter is remitted to the Tribunal for deciding the claim petition afresh from the stage of recording evidence of the witnesses on behalf of the respondents before it i.e. present appellant-Insurance Company.
- iii) The Tribunal shall also grant opportunity to the present respondent No.3-owner of the vehicle to lead evidence, if he is ready to examine witnesses.
- iv) The appellant-Insurance Company and respondent Nos.1 and 2 shall appear before Motor Accident Claims Tribunal-4, Nagpur on 18th March, 2015 at 11.00 a.m. and abide by its further instructions-orders.

- v) Respondent Nos. 1 and 2-claimants shall take steps to serve notice of the proceedings on respondent No.3-owner of the vehicle.

The appeal is **allowed** in the above terms. In the circumstances, the parties to bear their own costs.

The claim petition is of the year 2010. The Tribunal shall take steps to decide it expeditiously.

JUDGE.

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