IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.817 OF 2004

United India Insurance Co. Ltd.
Through its Divisional Manager,
Aurangabad Division, Aurangabad. = **APPELLANT**
(orig.Resp.no.2)

VERSUS

1) Baburao s/o Sakharam Hanwate
Age: 35 Yrs., occu. Service,
r/o Hatta, Tq. Basmat,
District Parbhani.

2) Sk. Janimiya Bademiya,
Age: 50 Yrs., occ. Business
(Truck owner)
R/o Karkhana Road, Basmath,
Tq. Basmath, Dist. Parbhani. = **RESPONDENTS**
(Resp.No.1 is orig. claimant and Resp. No.2 is orig.Resp. No.1)

Mr. DB Shinde, Advocate h/for Mr. M.S.Deshmukh, for Appellant.

Mr.MB Sandanshiv, Adv. h/for Mr. YN More, Adv. For Resp.No.1.

CORAM : P.R.BORA, J.

DATE : 15th September,2016.

ORAL JUDGMENT:

1) Heard. The insurance company has filed the present appeal against the Judgment and Award dated 13th March, 2003 passed in MACP No.95/1999 by Motor Accident Claims Tribunal, Parbhani. (for short, the Tribunal) Respondent No.1 had filed the aforesaid claim petition seeking compensation on account of the injuries caused to him in a vehicular accident happened on 11th January, 1999 having involvement of a truck bearing registration No.MTB-1371 registered with the appellant/insurance company.

2) It was the contention of present Respondent No.1 that the alleged accident had happened because of negligence on the part of driver of the offending truck. He had, therefore, claimed compensation from the driver, owner and insurer of the offending truck.

3) The claim petition was contested by the insurance company. It was the contention of the insurance company that on the date of the accident, the offending truck was not insured with it and as such, it was not liable to indemnify the owner of the truck. The petition was also contested on the point of quantum.

4) The learned Tribunal, after having assessed the oral and documentary evidence brought before it, granted to the claimant the compensation of Rs.30,900/- inclusive of NFL compensation jointly and severally from the owner and insurer of the offending truck. Aggrieved by, the insurance company has filed the present appeal.

5) The only ground, which is raised during the course of the argument, is that on the date of the accident, the offending truck was not insured with the insurance company and as such,

it was not liable to indemnify the insured, i.e. owner of the truck. The learned Counsel appearing for the appellant submitted that the appellant insurance company has sufficiently proved that the cheque issued by the owner of the offending truck towards premium of the insurance policy purchased by the said owner for the offending truck, was dishonoured and as such, the policy was not in force on the date of the accident. The learned counsel submitted that the cover note was issued evidencing that the offending vehicle was insured for the period 28.10.1998 to 27.10.1999. However, the cheque issued by the owner of the truck towards the amount of policy premium, was dishonoured and the owner of the vehicle subsequently remitted a demand draft of the premium amount on 12th January, 1999. The learned Counsel further submitted that the demand draft was sent by the owner to the insurance company by post, which was received to the insurance company on 18th January, 1999. The learned Counsel submitted that the alleged accident had happened on 11th January, 1999. The learned Counsel submitted that the owner of the truck, with fraudulent intention, sent the demand draft of the premium amount after occurrence of the accident on 11th January, 1999 so as to avoid his personal liability to pay the amount of compensation. The learned counsel submitted that the learned Tribunal has failed in appreciating the aforesaid aspect and has on erroneous grounds, turned down the plea taken by the insurance company. The learned Counsel, therefore, prayed for setting aside the impugned Judgment and Award.

6) No one has appeared for the respondent No.2.

7) After having carefully considered the submissions made on behalf of the appellant and on perusal of the impugned judgment, it does not appear to me that any case is made out by the appellant insurance company, warranting any

interference in the impugned Judgment and Award. As mentioned herein above, the only ground which has been pressed during the course of the arguments is that the offending truck was not insured on the date of the accident. It is not in dispute that the insurance cover note was issued by the appellant insurance company evidencing that the offending truck was insured with it for the period between 28.10.1998 to 27.10.1999. The insurance company has not brought on record any evidence to show that after the cheque issued by the owner of the truck towards the policy premium was dishonoured, the insurance company had cancelled the insurance policy and had informed about the same to the owner of the vehicle as well as to the concerned RTO. In such circumstances, it is difficult to accept the contention of the appellant insurance company that it was exonerated from the liability to indemnify the insured and no order could have been passed against it.

8) For the reasons stated above, it does

not appear to me that any error is committed by the Tribunal in passing the impugned Judgment and Award. The appeal is devoid of any substance and deserves to be dismissed and is accordingly dismissed without any order as to the costs. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/