IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 348 OF 2013
WITH
CIVIL APPLICATION NO. 7574 OF 2014
WITH
CIVIL APPLICATION NO. 10292 OF 2012

National Insurance Co. Ltd. & Anr. … Appellant
Vs.
Ramkrishna Sundarbabu Limbale … Respondent

Mr. A.B. Gatne, Advocate for the Appellant.
Mr. Jayant R. Patil, Advocate for respondent no.1.

CORAM : A.V. NIRGUDE, J.
DATE : 31-08-2016.

Per Court :

1. This is an appeal filed by the insurance company. Respondent no.1 sustained injury and suffered 10% permanent disablement in a motor accident. Admittedly respondent no.1 was pillion rider on a motor cycle which collided with an auto-rickshaw. The police registered offence against the auto rickshaw driver and during investigation of such case the police could get on record an insurance cover note apparently issued by the appellant insurance company.

2. When the claim was filed, appellant-insurance company stated in written statement that auto rickshaw was not insured with them and that the respondent-claimant should prove such policy. Despite taking a firm stand in written statement, the insurance company did not take further steps when the case was tried.

3. On one hand, respondent-claimant entered witness box and produced documents including the alleged cover note.

Insurance company did not cross-examine respondent no.1, on the point of genuineness of the cover note. On the face of it, the cover note looks dubious and suspicious but no doubt was raised at the time of cross-examination of respondent-claimant. The value of the vehicle is shown equivalent to the value of the amount of premium paid. In addition to this, insurance company ought to have examined the witness who could have stated as to how the documents in question were forged etc. Even this was not done. This is the case where despite taking a formidable defence no evidence was led.

4. The learned counsel for the appellant asserted that, though his client did not make efforts in the lower court, he suggested that the learned member and this court must examine the document in question and express its opinion as to its genuineness. I am afraid, this submission is not acceptable. Despite a specific written statement, the respondent-claimant produced this document on record, and thereby, he took a risk of cross-examination and scrutiny of genuineness of the document. The insurance company had ample opportunity to at least point out that document was a forgery. By keeping quiet during the trial no substantive evidence came on record to question the genuineness of the document. In my view, substantive evidence was required to justify what is stated in the written statement. Appeal should therefore fail.

5. Appeal is dismissed. The amount deposited by the appellant in this court shall be handed over to the respondent-claimant. Both the civil applications stand disposed of.

(A.V. NIRGUDE)
JUDGE

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