IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 17 OF 2015

THE BRANCH MANAGER, UNITED INDIA INSURANCE CO. LTD., PRESENTLY THR. ITS SENIOR DIVISION MANAGER. ... Appellant

Versus

MRS ASMITA ASHOK PRABHU. ... Respondent

Shri Suraj Rohidas Naik, Advocate for the Appellant.
Shri D. Pangam, Advocate for the Respondent.

Coram:- SMT. R. P. SONDURBALDOTA, J.

Date:- 9th December, 2016

ORAL ORDER :

By the order dated 7th October, 2016 it was directed that this appeal can be disposed off finally at the stage of admission on the following substantial question of law:

> Whether the Courts below have failed to note that insurance policy at Exhibit 24-C restricts the liability of the appellant in the sum of Rs.2,10,000/- whilst granting the relief to the respondent?

2. The Second Appeal is preferred by the original defendant to challenge the judgment and decree dated 20th June, 2012 passed by the Trial Court which has been modified by the District Court by its order dated 25th February, 2014.

3. The appellant is an Insurance Company with whom truck bearing registration no.GA-01-W-6504 of the respondent was insured against comprehensive risk. During the subsistence of the policy, the truck met with an accident on 2nd June, 2010 and was badly damaged. Thereafter, the respondent visited the office of the appellant on several occasions for early settlement of the insurance claim so that she could get the truck repaired and have it plied on the road. When the appellant did not respond in time she was constrained to file Regular Civil Suit No.46/2011 seeking reimbursement of repair charges on account of insurance and damages under three heads. The first head was of rent paid for keeping the damaged vehicle in a garage. The second head was damage for the financial loss suffered by the respondent for eleven months for not plying the vehicle and the third was the financial loss suffered by the respondent from the date of the suit till payment.

4. The Trial Court by its judgment and order dated 20th June, 2012 decreed the suit and directed the appellant to pay (i) sum of Rs.84,000/- being the costs of repairing the vehicle with interest at the rate of 9% per annum from 2nd March, 2011 till the date of the decree and thereafter interest at the rate of 6% per annum from the date of decree till actual payment, (ii) sum of Rs.3,10,000/- for damages towards the financial loss suffered by

the respondent for eleven months for not being able to ply the truck on the road and interest at the rate of 9% per annum from 2nd June, 2010 till the date of the decree and future interest at the rate of 6% per annum from the date of decree till actual payment, (iii) sum of Rs.66,000/- towards the rent paid by the respondent for keeping the truck in the garage along with interest at the rate of 6% per annum from 2nd July, 2011 till actual payment, and (iv) damages at the rate of Rs.1,000/- per day towards the financial loss suffered by the respondent from the date of filing of the suit till actual payment along with interest at the rate of 6% per annum.

5. Being aggrieved by the order, the appellant approached the District Court with Regular Civil Appeal No.36/2013. By the order dated 25th February, 2014, the District Court disposed off the appeal by modifying the order. The modification was to reduce the rate of interest as also the rate for calculation of damages from Rs.1,000/- to Rs.939/- from the date of the suit till the actual payment.

6. In the above facts of the case the substantial question of law framed as above is limited to the recovery of Rs.84,000/- being the repair charges payable under the insurance contract. Shri Naik, the learned Counsel in his lengthy submissions argued that since the limit of the Insurance Policy was Rs.2,10,000/- and the

amount awarded to the appellant exceeding the limit cannot be justified. The argument is fallacious since as noted above only one of the demands of the respondent arose under the insurance contract i.e. the demand for reimbursement of repair charges for the truck. The limit of Insurance Policy would be relevant only for the purpose of this demand. The other amounts sought to be recovered by the respondent do not flow from the Insurance Policy. The claim for those amounts arise out of the delay on the part of the appellant in processing the claim of respondent. These are the claims in tort. The amount granted for the repairing charges is well within the limit of the coverage under the Insurance Policy. Hence the substantial question of law is answered in the negative and the appeal is dismissed.

SMT. R. P. SONDURBALDOTA, J.

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