

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 2924 OF 2014**

|                              |                 |
|------------------------------|-----------------|
| Ajay Laxman Kadam            | ... Petitioner  |
| Vs.                          |                 |
| Tanaji Bapuso Gaikwad & Anr. | ... Respondents |

Mr. V.S. Talkute, Advocate for the petitioner.  
None for the respondents.

**CORAM : MRS.MRIDULA BHATKAR, J.**  
**DATE: SEPTEMBER 16, 2016**

**P.C.:**

Rule. Rule made returnable forthwith.

2. Though notices for final hearing at the stage of admission were served to the respondents, none present for them. Hence, decided finally.

3. In this Writ Petition, the owner of the tanker, i.e., original opponent no. 2 has challenged the order dated 27<sup>th</sup> August, 2013 passed by the learned Member, Motor Accident Claims Tribunal, Satara thereby dismissing the Application of the petitioner for setting aside the ex-parte judgment and award dated 29<sup>th</sup> April, 2004 passed by the Tribunal under the Motor Vehicle Act. Respondent no. 1 is the original claimant, who was injured in the accident on 7<sup>th</sup> March, 1998. In the original claim application, the driver of the tanker was opponent no. 1, the petitioner was opponent

no. 2 and opponent no. 3 was the insurance company, namely, New India Assurance Co. Ltd..

4. It is the contention of the learned counsel for the petitioner that though his tanker involved in the accident was insured with the New India Assurance Co. Ltd. for a period from 10<sup>th</sup> April, 1997 till 9<sup>th</sup> April, 1998 covering the date of accident, i.e., 7<sup>th</sup> March, 1998, the said insurance policy was not presented before the learned Member of the Tribunal by the insurance company/original opponent no. 3. The learned counsel further submitted that the petitioner was served in the original claim application, however, he was assured by the insurance company that the insurance company will take care of the matter, as the tanker was duly insured with them. However, this policy was not produced before the Tribunal and it was informed that the policy under which the tanker was insured expired on 3<sup>rd</sup> March, 1998. The insurance company represented that the tanker was insured with them from 4<sup>th</sup> March, 1997 till 3<sup>rd</sup> March, 1998 and the accident took place on 7<sup>th</sup> March, 1998, therefore, on the date of the accident, the tanker was not insured. The learned counsel submitted that the insurance company has misguided the Tribunal, therefore, the Tribunal held the present petitioner, i.e., original opponent no. 2 fully liable to pay the entire compensation to the claimant. The learned counsel produced a photocopy of the valid policy of the tanker MTD-2874. He has submitted

that he has filed affidavit of service that the respondents were served with the notices informing that the petition will be heard finally at the stage of admission but the respondents are not coming before the Court. He further submitted that in the execution application, these facts are brought before the Tribunal and still the execution is pending. So the impugned order of dismissal be set aside and the petitioner be given an opportunity to put up his case before the Tribunal.

5. Perused the photocopy of the insurance policy dated 10<sup>th</sup> April, 1997 of Tata Petroleum Tanker No. MTD 2874 disclosing the period of policy from 10<sup>th</sup> April, 1997 to 9<sup>th</sup> April, 1998 of the New India Assurance Co. Ltd. If this policy is true, then on the date of accident, i.e., 7<sup>th</sup> March, 1998, the impugned vehicle was insured with New India Assurance Co. and the insurance company would have been held liable to pay the entire compensation. However, it appears that these facts were not brought on record before the Tribunal but different policy period was brought on record. The learned Member of the Tribunal in the order under challenge, i.e., 27<sup>th</sup> August, 2013 have observed that the present petitioner was not diligent and therefore, has rejected the Application. If the vehicle was insured on the date of the accident then it will be unjust to deny opportunity to the petitioner to bring correct facts on record. However, the original claimant is litigating his claim since 1999, so he should not suffer

more. Hence, the award passed in his favour of Rs.1,27,000/- and interest is maintained and only point of liability is to be determined. Under the circumstances, whether the impugned policy is valid or not is to be ascertained and for that purpose only it will be appropriate to set aside the judgment and award partially as follows:

- a) The judgment and award dated 29<sup>th</sup> April, 2003 is hereby set aside to the extent of only fixing interse liability between the insurance company and the owner of the vehicle, i.e., original opponent nos. 2 and 3.
- b) It is made clear that the award in respect of granting compensation of Rs.1,27,000/- with interest @ 9% p.a. from the date of filing of the application till entire realization of the amount is not set aside and it remains as it is.
- c) Fresh evidence of the original claimant is not required.
- d) The petitioner shall serve the insurance company and the original claimant copy of this order on or before 23<sup>rd</sup> September. 2016. Humdast granted.
- e) The parties to appear before the learned Member of the Motor Accident Claims Tribunal, Satara on 27<sup>th</sup> September, 2016 at 11 a.m.
- f) The petitioner may file written statement restricted to policy only.

- g) It is pointed out to the notice of the learned Member of the Tribunal that the claim is of 1999 and, therefore, it is to be entertained and tried by giving top priority and dispose of the same within three months.
- h) If the policy which is relied and produced before this Court by the petitioner is found bogus, the Tribunal shall take necessary action against the petitioner/owner of the tanker.

6. Writ Petition is disposed of.

7. Registrar (Judicial) to send the copy of this order to the Member, Motor Accident Claims Tribunal, Satara immediately to enable the learned Member to take the matter on board on 27<sup>th</sup> September, 2016.

**(MRS. MRIDULA BHATKAR, J.)**