IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 112 OF 2016
WITH
CIVIL APPLICATION NO. 229 OF 2016

United India Insurance Company Ltd. ... Appellant
vs.
Shri. Sagar Jaywant Sawant and anr. ... Respondents

Mr. Rahul Mehta i/by KMC Legal Venture, Advocate for the appellant.

Coram : Smt. R. P. SondurBaldota, J.
Date : 3rd May, 2016

P.C. :

1. This appeal is preferred against the order dated 4th December, 2015, by which the Motor Accident Claims Tribunal, Mumbai dismissed the appellant's application under Order IX Rule 13 of C.P.C. for setting aside the ex-parte order dated 2nd January, 2013 passed under Section 140 of the Motor Vehicle Act, granting interim compensation of Rs.25,000/- to respondent no.1. Perusal of the order dated 2nd January, 2013 shows that, the proceedings and the application had been duly served upon the appellant.

However, no appearance on its behalf had been filed. The owner of the offending vehicle was also absent. Then, the Tribunal after considering the claim of respondent no.1 of permanent partial disablement to the extent of 25%, directed immediate payment of compensation of Rs.25,000/- to respondent no.1.

2. The application of the appellant for setting aside that order has been rejected by the Tribunal. In that application it was contended by the appellant that the insurance policy in respect of the offending vehicle was in fact a fake policy and a fraud has been played upon the Court by production of that policy. The Tribunal held that the issue of fact relating to the genuineness of the insurance policy can be considered only at the time of final hearing of the claim proceedings under Section 166 of the Motor Vehicles Act. Since those proceedings are still pending, there was no need to disturb the impugned order.

3. Since admittedly the appellant was not present before the Tribunal despite service of notice, firstly there cannot be any infirmity on the part of the Tribunal in passing the order under Section 140 of Motor Vehicle Act. In any

case, it is already been observed by the Tribunal that any contention as regards the genuineness of the insurance policy can be agitated by the appellant at the time of final hearing of the claim petition. Hence, the appeal is dismissed. The amount of Rs.12,500/- deposited by the appellant in this Court at the time of filing of the appeal be transferred to the Tribunal.

4. In view of dismissal of the appeal, Civil Application No. 229 of 2016 does not survive. The same is accordingly disposed off.

[Smt. R. P. SondurBaldota, J.]