

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 768 OF 2013
ALONGWITH
CIVIL APPLICATION NO. 2364 OF 2013
IN
FIRST APPEAL NO. 768 OF 2013

United India Insurance Co. Ltd.

.....Appellant

V/s.

Mohd. Amir Abdul Ansari and Ors.

.....Respondents

* * * * *

Mr. Atul B. Gatne, Advocate for the appellant.

Ms. Pooja Kamat i/by. Mr. Avinash M. Gokhale, Advocate for respondent no.1.

Coram :- Smt. R.P. SondurBaldota, J.

23rd March, 2016.

P.C. :-

1). This Appeal filed in the year 2014 by the Insurance Company challenges the order dated 30th October, 2012 by which the Motor Accidents Claim Tribunal, (MACT) Mumbai directed it to pay compensation in the sum of Rs.1,19,443/- alongwith interest at the rate of 7.5% p.a. jointly and severally with the owner of the offending vehicle. The appeal has been pending for admission till date. By the order dated

13th September, 2013 the Registrar (Judicial) had directed the appellants to remove office objections of payment of bhatta and supply of copy of Civil Application by 4th October, 2013 for the purpose of service upon respondent no.2. The appellant, failed to comply with the order. Consequently, First Appeal and Civil Application No. 2364 of 2013 stood dismissed against respondent no.2 for non-compliance of conditional order. The appellant till date, has not taken any steps for restoration of the First Appeal against respondent no.2. Mr. Gatne, the learned Advocate appearing for the appellant seeks adjournment for filing appropriate application for restoration of the First Appeal against respondent no.2 without whom the appeal cannot be maintained. There is no explanation offered for not taking steps for the last 3 years. In that circumstance, the application for adjournment is refused. As has been rightly submitted by Ms. Kamat, the learned Advocate appearing for respondent no.1, the appeal against respondent no.1 alone without the owner of the offending vehicle, is not maintainable and that it is liable to be dismissed on that ground alone.

2). Even, if the merits of the appeal are to be considered, perusal of the memo of appeal shows that, there is no case made out whatsoever for the challenge to the impugned order. According to the appellant, it is not liable to pay compensation by indemnifying the owner

of the offending vehicle because at the relevant time, the driver of the offending vehicle was not holding valid and subsisting license. The Tribunal, at para-7 of the impugned Award has held that, the appellant has failed to establish this fact by necessary evidence. The appellant had examined its investigator in the petition. He had produced the documents obtained from the Regional Transport Office (RTO) and tendered the same in evidence. The Tribunal has held that, there was no evidence led by the appellant to establish the contents of the documents by leading evidence of a proper witness. It has also been noted that, witnesses for the purpose were easily available for the appellant. However, no attempt was made by the appellant to examine any such witness. Consequently, contents of the documents remained unproved and unestablished.

3). Mr. Gatne, submits that since the documents produced were of certified copies of the records maintained by RTO they would have a presumptive value and as such the Tribunal ought to have accepted the same for the purpose of consideration. The presumptive value is limited to production of the documents by dispensing with the evidence required as regards the existence of the documents. The presumption cannot be extended to the truth of the contents of the documents which is required to be separately established by a party by

leading appropriate evidence. Since the appellant has not examined any such witness, the Tribunal is correct in its appreciation and decision that the appellant has failed to establish that the driver of the offending vehicle was not holding valid license at the relevant time. Hence, there is no merit in the First Appeal. The same is dismissed. The amount of Rs.25,000/- deposited by the appellant as statutory deposit be transferred to the MACT, Mumbai.

4). In view of dismissal of the First Appeal, the Civil Application does not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)