IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 13701 OF 2016 IN FAST/29595/2016

UNITED INDIA INSURANCE CO. LTD.
VERSUS
SHAKTIBAI RAVINDRA PARIWAL AND ORS
...
Advocate for Applicant : Mr. A.B.Kadethankar h/f. Mr. S.S. Rathi.
Advocate for Respondents No.1 to 5 : Mr. Kiran Nagarkar.
Advocate for Respondent No. 6 : Mr. T.D. Aghav.
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CORAM : K.K. SONAWANE, J.

DATED : 3rd NOVEMBER, 2017.

Order :-

1. Heard learned counsel for the applicant-Insurance Company, respondents No.1 to 5 - original claimant and respondent No. 6.

2. This is an application for condonation of delay in filing the appeal against impugned Award dated 07-07-2010 passed by the learned Tribunal under section 140 of the Motor Vehicles Act, 1988 (for short Act of 1988") for "No fault liability". According to learned counsel for the applicant-Insurance Company, there is delay of 2176 days in filing the appeal. But, the delay is not intentional or deliberate, however, it was caused due to unavoidable circumstances. The certified copies of the impugned Award were misplaced and remained unnoticed. The staffer of the applicant -Insurance Company could not deal with the matter at the earliest within stipulated period and consequently the delay has been caused to present an appeal.

3. It has been submitted that respondents no. 1 to 5 original claimants filed claim petition under section 166 of the Act of 1988 against the owner and present applicant -Insurance Company for compensation on account of death of victim Ravindra arising from the vehicular accident. According to learned counsel, offending vehicle was not insured with the applicant-Insurance company on the day of accident, therefore, monetary liability cannot be fastened on it for payment of "no fault liability". In such circumstances, the applicant preferred the present appeal, but there was delay, and it not intentional or deliberate. Hence he requested to condone the delay.

4. Learned counsel for respondents No. 1 to 5-original claimants vociferously opposed the contentions put-forth on behalf of applicant-Insurance Company and submits that there is inordinate delay in filing the appeal. Moreover, he harped on the circumstances that the appeal itself is not maintainable, which is filed against Award passed under section 140 of the Act of 1988 by the learned Tribunal for "no fault liability". He added that the legal issue of validity of policy in respect of offending vehicle would be dealt with by the learned Tribunal, in the proceeding filed under section 166 of the Act of 1988, by the original claimant. Therefore, when the present appeal is not sustainable there is propriety to condone the delay and same deserves to be dismissed. He prayed to reject the application.

5. Learned counsel for respondent No. 6 also raised objection and prayed to dismiss the application.

6. I have considered the arguments canvassed on behalf of both sides. Perused the application. Admittedly, the present application is filed for condonation of delay. The applicant-Insurance company is intending to prefer an appeal against the impugned Award passed by the learned Tribunal under section 140 of the Act of 1988 for grant of compensation under "No fault liability". But , there is inordinate delay of 2176 days to present the appeal. According to learned counsel for the applicant, the relevant documents of the impugned Award i.e. certified copies of the Award etc. were misplaced in the office of the applicant-Insurance Company and remained unnoticed by the staffer of the Insurance Company. Therefore, the appeal could not be filed within stipulated period. The explanation on behalf of applicant-Insurance Company appears concocted and fanciful one. It is preposterous and incomprehensible to appreciate that the certified copies of the impugned Award were misplaced and remained unnoticed for colossal period by staffer of the applicant -Insurance Company. The negligence on the part of staffer of the applicant-Insurance Company could not be considered a reasonable ground to condone the delay.

7. Moreover, at this juncture, I find force in the argument advanced on behalf of respondents No. 1 to 5-original claimants that the legal issue of monetary liability pursuant to impugned insurance policy is subjudice before the learned Tribunal in the application by respondents No. 1 to 5-original claimants filed under section 166 of the Act of 1988. The learned Tribunal would be the appropriate authority to deal with the issue on anvil of merit. In case any conclusion is

drawn on the basis of document in the appeal at the stage of enquiry for "No fault liability" under section 140 of the Act of 1988, it would create complication in the proceedings filed under section 166 of the Act of 1988 and also cause injustice and prejudice to the original claimants.

8. In the case of ***Esha Bhattacharjee Vs. Managing Committee, reported in (2013) 12 SCC 649***, the Hon'ble Apex Court while dealing with the circumstances for condonation of delay held that the substantial Justice being paramount and pivotal, the technical consideration should not be given undue and uncalled emphasis. It would be reiterated that original claimants filed application under section 166 of the Act of 1988 before the learned Tribunal and the same is pending for adjudication. The legal issue of validity of Insurance Police of the offending vehicle would be dealt with by learned Tribunal by appreciating oral and circumstantial evidence to be adduced on record.

9. It has been alleged that there was no contract of insurance of the offending vehicle covering date on which the accident occurred. Therefore, appellant Insurance company is not liable to pay the compensation under "No fault liability". However, in the application filed under section 166 of the Act of 1988 the respondents No.1 to 5-original claimants categorically pleaded that offending vehicle was duly insured with appellant-Insurance Company for the period w.e.f. 27-11-2007 to 26-11-2008. The claimants also reproduced policy number in the application and contended that period of accident has already been

covered under the said policy. But, the appellant Insurance Company denied about such contract of insurance covering date and accident in this appeal.

10. I find that this legal issue is required to be dealt with in detail trial on merit. It would hazardous to arrive at some conclusion on the basis of documents at the initial stage of enquiry for compensation under "No fault liability". In such circumstances, when substantial relief could not be granted in the proceedings of the appeal itself, therefore, there is no propriety to proceed further for condonation of inordinate delay caused in filing the present appeal. The legal issue involved in the appeal requires detail trial and essential to be decided on the anvil of merit. It is hard to believe that the applicant-Insurance Company would succeed in the appeal. Therefore, undue and uncalled emphasis for liberal approach to condone the delay is unwarranted in this application. In case, the applicant - Insurance Company succeed in the application filed under section 166 of the Act of 1988 to establish that there was no contract of insurance for risk coverage during the relevant period of accident, the applicant - Insurance Company has a remedy to recover the amount paid if any for "No fault liability" from the insured. Moreover, the belated attempt to present an appeal seems to be one of the placebo device to lull, the proceeding filed under section 166 of Act of 1988 by the claimants which is pending since year 2010 before the learned Tribunal.

11. In the result, I am not prepared to nod in favour of applicant to condone the delay. Accordingly, application being devoid of merit,

stands dismissed. No order as to costs.

12. The amount of "No fault liability", if any, deposited on behalf of applicant – Insurance Company in this Court be remitted back to the learned Tribunal for further process according to law.

Sd/-
[K. K. SONAWANE]
JUDGE

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