IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.981 OF 2017
IN
FIRST APPEAL (STAMP) NO.1403 OF 2017
WITH
CIVIL APPLICATION NO.982 OF 2017
IN
FIRST APPEAL (STAMP) NO.1403 OF 2017

Iffco-Tokio General Insurance Company Limited ...Applicant/Appellant
vs.
Shir. Bhalchandra Laxman Naikdesai And Anr. ...Respondents

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Ms. Shalini Shankar, for the Applicant.

Mr. Saumen Vidhyarthi, for Respondent No.1.

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CORAM : S.C. GUPTE, J.

DATED : 17 APRIL 2017

P.C. :

. The First Appeal challenges an award passed by MACT, Mumbai in a claim application filed by the first Respondent, claiming compensation for his deceased daughter. MACT, Mumbai has awarded compensation of Rs.2,99,000/- to the Applicant, along with simple interest of 9% p.a. from the date of presentation of the application till payment or realization of the amount.

2. There is a 48 days' delay in taking out the present First Appeal. For the reasons stated in the Civil Application seeking condonation of this delay, the Civil Application (Civil Application No.981

of 2017) is allowed and the delay is condoned.

3. Civil Application No.982 of 2017 seeks stay of execution of the impugned award. There is an attachment levied on, by taking symbolic possession of, the Appellant's properties. Learned Counsel for the Appellant submits that the Appellant has deposited the entire decretal amount, along with uptodate interest, before MACT, Mumbai and that against such deposit, the execution of the impugned award be stayed.

4. By consent of parties, the appeal is admitted and taken up for hearing forthwith.

5. The Applicant is 91 years old. He was dependent upon his only daughter, who died in the motor accident on 19 April 2010. Whilst crossing the road, the deceased was knocked-down by a motor cycle, which was driven in a rash and negligent manner. The only defence of the Appellant Insurer is of breach of terms and conditions of the policy of insurance. It is submitted that the vehicle, which caused the accident, was driven without a valid driving licence. The plea that the vehicle was driven without a valid licence, is merely based on a charge-sheet filed by the police against the driver of the vehicle. It is pertinent to note that before MACT, Mumbai, there was no issue framed as to whether the driver of the motor cycle held any valid licence. There was no witness examined by the Appellant Insurer, in this behalf. On these pleadings, and evidence before the Court, it cannot be said that the Appellant Insurer had discharged the burden of proving that the driver of motor

cycle was not holding a valid driving licence. This Court in **New India Assurance Co. Ltd. vs. Arvind P. Kulkarni**[1], in somewhat similar circumstances, held that in a case where there was no investigation carried out by the police, finding that the driver did not have a valid driving licence, and where no record of original driving licence was produced, it could not be said that the burden to prove want of a valid licence was discharged by the Insurer. In that case, the police officer, who had filed the FIR, was examined before the Motor Accident Claims Tribunal. In the present case, there is not even evidence of the police officer, who filed the FIR/charge-sheet.

6. In these facts, there is no merit in the defence of the Appellant Insurer that the vehicle causing the accident was driven in breach of the contract of insurance, that is to say, without a valid driving licence. The impugned award of the MACT, Mumbai was passed after properly analysing the evidence on record and applying correct law to these facts found by the Court.

7. In the premises, there is no merit in the appeal. The First Appeal is accordingly dismissed.

8. Learned Counsel for the Appellant prays for an order permitting her to proceed against the owner of the vehicle to recover the amount. As the evidence before the Court stands, there is no proof that the motor cycle was driven in breach of the contract of insurance. Anyway, if the Appellant has any such case, it can claim restitution on

1 First Appeal No.100/99 dated 7 Septemebr 2010

that basis. It will be permissible for the Appellant to make an appropriate application in this behalf and set up and prove such plea.

9. In view of the dismissal of the First Appeal, the Civil Application (Civil Application No.982 of 2017) for interim relief, does not survive and the same is also disposed of.

10. Respondent No.1 will be entitled to withdraw the amount deposited by the Appellant Insurer before MACT, Mumbai. Amount of Rs.25,000/- deposited by the Appellant Insurer as a pre-requisite for filing of the present First Appeal, shall be transferred by the Registry to MACT, Mumbai and the same shall also be allowed to be withdrawn by Respondent No.1.

(S.C. GUPTE, J.)