IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO.29516 OF 2007
WITH
CIVIL APPLICATION NO.6731 OF 2007
WITH
CIVIL APPLICATION NO.6732 OF 2007

The New India Assurance Co.Ltd. ..Appellant/Applicant
V/s.
Mrs.Aruna Shreekant Raut & Anr. ..Respondents

WITH
FIRST APPEAL (ST) NO.29522 OF 2007
WITH
CIVIL APPLICATION NO.6728 OF 2007
WITH
CIVIL APPLICATION NO.6729 OF 2007

The New India Assurance Co.Ltd. ..Appellant/Applicant
V/s.
Mr.Laxman Ramu Ghanekar & Anr. ..Respondents

Mr.D.R. Mahadik for the Appellant/Applicant.

Mr.H.G. Khambete h/f Mr.A.M. Gokhale for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 24 JANUARY 2017.

P.C.

1. The appeal is taken up for final disposal at the stage of admission itself.

2. This is because the learned counsel for the appellant has submitted that the main ground in this appeal is that the vehicle which met with the accident was not covered under Insurance Policy issued by the appellant.

3. Mr.Mahadik the learned counsel for the appellant has submitted that the claimant only produced a xerox copy of the cover note. He submits that the owner was a party to the proceedings but was neither examined nor did the owner produce the original Insurance Policy or cover note, if at all the same was in existence. As per the records of the Insurance Company, the cover note which was relied upon by the claimant was in respect of a vehicle owned by one Mr.Lokhande. Ignoring all this evidence the learned MACT has incorrectly concluded that the vehicle in question was insured with the appellant. Mr.Mahadik submits that this finding is vitiated by perversity it is contrary to the weight of the evidence on record. On this ground he submits that the appeal is liable to be allowed and the Insurance Company absolved of all the liabilities in the matter.

4. Mr.Khambete the learned counsel for the claimants-respondents has countered the submissions made by Mr.Mahadik. He submitted that the finding recorded in the impugned award its is supported by the evidence on record. He has submitted that the Insurance Company did not bother to examine Mr.Lokhande though, it was their case that the Insurance cover pertain to the vehicle owned by Mr.Lokhande. He submits that the Insurance Company cannot avoid liability in this matter and in case they have any independent claim against the owner of the vehicle, they may pursue the same. For all these reasons Mr.Khambete submitted that there is no case made out to interfere with the impugned award.

5. In this case it cannot be said that finding recorded by the MACT as against issue no.4 is unsupported by the material on record. Besides, since, the appellant came up with the positive stand that the cover note produced by the claimant pertains to the vehicle owned by Mr.Lokhande, it was expected that the Insurance Company makes good such specific defense either by producing clear and ambiguous document on record

or at least by summering and examining Mr.Lokhande as a witness in the matter. In this case Mrs.Parab who was examined on behalf of the Insurance Company had candidly accepted that she was not at the relevant office when the cover note upon which the reliance was placed by the claimant was issued. The MACT, has duly considered the material on record and arrived at the finding that the vehicle was indeed insured by the appellant Insurance Company and on such basis held the Insurance Company jointly and severely liable.

6. The reasoning in the impugned order is contained in paragraph 14 which reads thus :-

> *"14. Admittedly Ex.16 the cover note is copy of certified by the Police Station Officer as provided to the applicants. On the fact of record witness, Mrs.Sakshi Parab is attached to the Thane D.O. which appears to have issued Exh.16 from 2002. The proposal from produced by the insurer. Form is submitted with Kalyan Office of the opponent No.2. Witness, Mrs.Parab has admittedly stated in clear terms that she never worked with Kalyan Office. Admittedly she has no personal knowledge about the*

transaction that took place in respect of the document relied upon by the insurer that took place at Kalyan Officer. So called insured Mr.Lokhande is not produced before the court nor original police alleged to have been issued in his favour with so called cover note is coming forward to support the plea of the opponent No.2. One finds that O.W.1 Mr.Haridas has stated on oath that personally visiting the office of opponent No.2 he obtained cover note vide Ex.16 on payment of premium. Obviously this particular cover note as claimed by the opponent No.1 i.e. owner of the offending vehicle is issued by the Thana office of opponent no.2. No document like cashier scroll for the receipt of payment on the relevant day is produced by the opponent No.2 in order to convince the court that no payment from the opponent No.1 as such was received by the Thana office of opponent No.2 on 23-12-98 or near by the said date nor any record as such produced that for the relevant year or on 23-12-98 any particular policies or cover notes were issued by the Thana office of opponent no.2 excluding the cover note as claimed by the opponent No.1. And therefore, considering the evidence that came on record more particularly when witness Mrs.Parab has no personal knowledge regarding the said transaction in the absence of convincing office *record of opponent No.2, I find it very difficult to believe the evidence of Mrs.Parab and to reach to the only conclusion that policy was issued to some other person than the opponent No.1. On the other hand no evidence in rebuttal disputing Exh.16 by office bearer of opponent No.2 working with Thana office for the relevant period leads to believe me that Ex.16 cannot be disbelieved more particularly the receipt regarding transfer of the earlier policy Ex.24 is admitted even by the witness, Mrs.Parab produced by opponent No.1 and therefore, in the typical facts and circumstances of this case one has to accept and believe the case of the applicant which is supported by opponent No.1 with documentary evidence that offending vehicle was duly insured with opponent No.2 covering the date of accident."*

7. Upon cumulative consideration on the material on record and the plea raised, there is really no case made out to interfere with the impugned award. This appeal is accordingly dismissed. There shall be however no separate cost in this appeal. Ad-interim relief, if any, stands vacated.

8. There is no dispute that the issues which have

arisen First Appeal Stamp No.29516 of 2007 are virtually the same as the issues which arise in this Appeal. The First Appeal Stamp No.29522 of 2007 has not been registered because no steps, appear to have been taken to serve respondent no.2 i.e. the owner of the vehicle. Infact, the impugned award in this appeal as well as First Appeal Stamp No.29516 of 2017 is common. Therefore, the reasoning in First Appeal Stamp No.29516 of 2007 will also apply to First Appeal Stamp No.29522 of 2007. The First Appeal Stamp No.29522 of 2007 is also accordingly dismissed.

9. Ad-interim orders, if any, stand vacated.

(M. S. SONAK, J.)