IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO. 30828 OF 2016
WITH
CIVIL APPLICATION NO. 450 OF 2017
AND
CIVIL APPLICATION NO. 451 OF 2017

United India Insurance Company Ltd. .. Appellant
vs.
Shri Ravindra Sadashiv Khair & Ors... Respondents

Mr. Ketan Joshi for Appellant.

CORAM : M. S. SONAK, J.
DATE: 14 FEBRUARY 2017

P.C :

1] Upon production, taken on board.

2] Learned counsel for the appellant submits that this appeal can be disposed of without calling for record and proceedings.

3] In this case, the appeal has been instituted after delay of 244 days. Even if such delay were to be condoned, there is really no reason to interfere with the impugned award on basis of the two grounds urged by learned counsel for the appellant in support of this appeal.

4] Mr. Joshi presses the following grounds in support of the appeal.

> *"E. The Ld. Tribunal ought to have appreciated that the Accused driver is aged 24 years and did not hold any DL at the time of accident. The investigation carried out after*

passing of judgment reveals that the rider of the IV and insured / owner were fined by police under section 3(1) and 5(1)/181 of the Motor Vehicle Act respectively.

F. The Ld. Trial Court ought to have appreciated that the fine was imposed on 16th May, 2013 i.e. 35 days after the date of accident."

5] Mr. Joshi, in the context of ground (F) above, elaborates that since fine was imposed on the driver of the vehicle (original opponent no. 3), it is presumed that such driver was driving the motor vehicle without licence. In such a situation, Mr. Joshi submits that the MACT ought to have held that there was a fundamental breach of the terms of the insurance policy. In such a situation, Mr. Joshi submits that the insurance company ought not to have been made liable for payment of any compensation or in any case, the order for pay and thereafter recover from the owner ought to have been made.

6] In this case admittedly, neither the owner nor the insurance company laid any evidence in the matter. The driver of the vehicle was not ultimately examined and the driver did not even contest the proceedings. If, the insurance company was indeed serious in their contention that the driver had no driving licence at the time of the accident, then, it was for them to lead evidence in this matter. The insurance company could have always summoned the driver or the

RTO Officials. Mr. Joshi, states that the driver was summoned but refused to obey the summons. The insurance company, in such a situation, was not powerless. They could have always summoned the RTO Officials. The circumstance that fine was imposed upon the driver cannot, lead to any inference that such fine was imposed only because the driver was not having a valid driving licence. It is possible that such a fine was imposed on account of rash and negligent driving despite licence.

7] Accordingly, on the only two grounds urged before me, there is no case made out to interfere with the impugned award.

8] That apart, in this case, the MACT has itself determined the compensation at Rs.15,60,000/-. However, since the claimants had claimed only Rs.15,10,000/-, an award has been made for Rs.15,10,000/-. This is not at all proper. It is the duty of the MACT to determine and award just compensation.

9] For the aforesaid reason, this appeal and the civil applications are dismissed.

(M. S. SONAK, J.)

Chandka