

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12849 OF 2017

THE NEW INDIA INSURANCE COMPANY LTD
VERSUS
BALKISHAN GOPINATH LEMBHE AND OTHERS

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Advocate for Petitioner : Shri Chapalgaonkar S.G.
Advocate for Respondent 1 : Shri Mayure P.C.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 20, 2018
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PER COURT :-

1. The contesting respondent No.1, who's young son has suffered a serious injury, is before the Court.
2. Learned counsel for petitioner submits that respondent Nos.2 to 4, who are unserved, are not contesting respondents and the petitioner desires to delete them. Deletion is permitted at the risk of the petitioner, to be carried out forthwith.
3. I have considered the submissions of the learned Advocates for the respective sides. Learned counsel for the original claimants has vehemently opposed this petition, contending that the application filed by the petitioner, seeking amendment to the Written Statement is an

after thought and is belatedly filed. The accident claim has been lodged in 2015 and the amendment is sought on 28.8.2017. By the proposed amendment, the claim is sought to be defeated. In the alternative, he submits that if this Court is inclined to allow this petition, heavy costs may be imposed and the amount can be donated for the treatment of poor patients.

4. It is a settled position of law that when it comes to dealing with the amendment applications in relation to Written Statements, such applications will have to be considered liberally and not with the same strictness as is applicable for an amendment sought in the Plaint or the Complaint.

5. What emerges from the record is that the petitioner noticed that only a single page insurance policy cover note was placed on record by the claimant. The terms and conditions, which are integral parts of the insurance policy, were not placed before the Court. After a passage of time, the petitioner received the policy details from the issuing office at Chandigarh and it was promptly sought to be placed on record and the proposed amendment was purely on the basis of the terms and conditions of the policy, which were noticed by this petitioner after the trial had commenced.

6. It is crystallized law that an amendment can be permitted if ulterior or oblique motives or laches are not attributed to the conduct of the applicant. It also needs to be assessed as to whether the proposed amendment would enable the applicant to put forth his best case and thereby participate in the adjudicatory process. If an amendment is necessary for deciding all issues, the same can be allowed.

7. A brand new bus with a temporary registration, which has met with an accident, was covered by the insurance policy only for the transit distance of 120 kms. as it was being taken for demonstration purposes. The accident has occurred at a distance of 650 kms. and hence, it was necessary to bring the terms and conditions of the policy on record.

8. I am of the view that the Tribunal would be better assisted in adjudicating over the claim if the entire policy is placed on record and hence a consequential amendment in tune with the terms and conditions of the policy can be allowed so as to better assist the Court. Nevertheless, it cannot be ignored that the petitioner should have taken prompt steps for placing the entire policy on record while drafting and filing its written statement. For this lapse, costs can be imposed on the petitioner.

9. In view of the above, this petition is allowed. The impugned order dated 27.9.2017 is quashed and set aside. Application Exhibit 87 is allowed. The petitioner shall carry out the amendment in it's Written Statement on/or before 10.8.2018. An amount of Rs.5,000/- by the consent of respondent No.1, shall be donated by the petitioner to the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital, Aurangabad - CSR Fund”**) on/or before 3.8.2018 and shall report compliance of this direction by producing a receipt of having deposited the amount, before the Tribunal on/or before 10.8.2018.

10. As the recording of evidence of the claimant is concluded, on the request of the claimant, the matter is expedited and the Tribunal shall decide MACP No.79 of 2014 as expeditiously as possible and in any case on/or before 31.8.2019.

11. All contentions of the litigating sides are kept open.

(RAVINDRA V. GHUGE, J.)

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Ajay
Kishanrao
Losarwar

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signed by Ajay
Kishanrao
Losarwar
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