IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 07 OF 2017
WITH
CIVIL APPLICATION NO. 26 OF 2017
WITH
CIVIL APPLICATION NO. 3400 OF 2018

United India Insurance Co. Ltd. ... Appellant
V/s.
Smt.Aparna Somkant Mandke & Ors. ... Respondents

- Mr.Rahul Mehta i/b. KMC Legal Venture for the Appellant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the Appellant.

2] This Appeal is directed against the judgment and award dated 16/08/2016 passed by the Motor Accident Claims Tribunal, Mumbai, thereby partly allowing the Application No.1006 of 2010 with proportionate costs and directing the Appellant-Insurance Company to pay sum of Rs.19,36,955/- inclusive of NFL amount to the Respondents-Claimants with the interest at the rate of 7.5% per annum from the date of the application till realization and subsequently to recover the same from the owner of the offending vehicle, by filing the execution proceeding.

3] The Appeal is filed by the Appellant-Insurance Company only on the count that the Insurance Policy produced in the case was not at all proved on record and whatever Insurance Policy is produced on record is not pertaining to the offending vehicle. The Insurance Company has in this respect led the evidence of DW-1 Devyani, who is employee of Thane Divisional Office, who has deposed that the offending vehicle is not insured under the policy number which is given in the title clause of the claim. She has also deposed that the copy of the cover note tendered by the Claimants along with the Policy papers is a false document, as the Insurance Company has stopped to issue cover note from the year 2002.

4] However, in her cross-examination, it is brought on record that, she has not produced any documentary evidence about the decision taken by the Insurance Company not to issue cover note from the year 2002. It is also brought on record that, she has not tendered 'premium book' to show that no premium was received by the Insurance Company in respect of this offending vehicle. Moreover, she has also admitted that, after receiving the knowledge of the fact that the Applicant has produced the 'cover note' along with policy paper, Insurance Company has not taken any steps either to issue notice to the Insurer or to inform concerned RTO Officer that a fake document seems to have been created in respect of contract of Insurance as regards the offending vehicle.

5] Therefore, as held by the Hon'ble Apex Court in the case of *New India Assurance Co. Ltd. Vs. Kishor Singh Chauhan & Ors., 2014(3) TAC 482 (Del.),* where the Insurer has not served notice under Order-22 Rule-8 to the owner and driver of the offending vehicle to furnish relevant documents, the defence of forged cover note cannot be held to be established. It was held that, “in such situation, the Tribunal can grant the right of recovery to the Insurer, of the compensation amount from the owner of the offending vehicle, after paying the said amount to the Claimants. Especially when in the present case, the Claimants are the third party and therefore, they are not expected to have the knowledge of contract of insurance between Insured and the Insurer.

6] In the present case, the owner of the offending vehicle has not appeared in this appeal, despite his liability to pay the said amount. Even after the Tribunal has given directions to the Insurance

Company to recover the amount of compensation from the owner of the offending vehicle by filing execution, he has not challenged the said award by preferring any appeal.

7] In view thereof, no fault can be found in the impugned judgment and award passed by the Tribunal. The Appeal therefore being without merit, stands dismissed.

8] The statutory amount of Rs.25,000/- deposited in this Court, if not transferred, be transferred to the concerned Tribunal along with accrued interest, if any.

9] In view of disposal of the Appeal, nothing survives in the Civil Application(s), hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]