

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 4896 OF 2011
WITH
CIVIL APPLICATION NO. 4897 OF 2011
IN
FIRST APPEAL (ST.) NO. 28734 OF 2011**

United India Insurance Company Limited
Motor Third Party Hub

.. Applicant/Appellant
(Original Insurer)

Vs.

1.Bijulal V. Purushothaman & Anr.

.. Respondents

Mr.N. Mehta, Advocate i/b KMC Legal Venture for applicants.

Mr.A.M. Gokhale, Advocate a/w, Ms.Kamini Pansare, Advocate for
respondent No.1.

**CORAM : A.S. CHANDURKAR, J.
DATE : 21ST NOVEMBER 2018**

P.C.

CIVIL APPLICATION NO. 4896 OF 2011

1 Perused contents of the application. The cause of delay is mentioned in paragraph 3 of the application. The prayer as made is opposed by the learned counsel for the respondent No.1. However, as the reasons assigned are found to be acceptable, the delay in filing the appeal stands condoned.

2 The civil application is allowed and accordingly disposed of.

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3 This appeal under Section 173 of the Motor Vehicles Act, 1988 (for

short 'the said Act') takes exception to the judgment dated 18th August 2010 passed by the Motor Accident Claims Tribunal, Mumbai granting an amount of compensation of Rs.70,395/- with interest.

4 The principal ground of challenge as sought to be urged on behalf of the appellant is that the aspect of absence of insurance policy with the offending vehicle. It is submitted on behalf of the appellant that the vehicle in question was not duly insured with the appellant and hence the liability to satisfy the award could not have been saddled on the appellant. The learned counsel for the appellant sought to rely upon the evidence on record to substantiate his contention.

5 The learned counsel for the respondent No.1-claimant, however, submitted that the defence with regard to absence of a valid policy was not raised by the present appellant by seeking permission of the Claims Tribunal under Section 170(b) of the said Act. In absence of such permission being sought, it was not permissible to raise the same in the appeal. For the said purpose, the learned counsel for the respondents placed reliance on the decision in *Josphine James Vs. United India Insurance Company Limited & Anr.*¹. It was, thus, submitted that there was no reason to interfere in the appeal.

1 (2013) 16 SCC 711

6 I have heard the learned counsel for the parties. It is an admitted fact, as recorded by the Claims Tribunal, that though various defences were sought to be raised by the present appellant in its written statement, permission under Section 170 of the said Act had not been obtained. The defence that the offending vehicle was not duly covered was required to be proved by the insurer after seeking such permission. That permission was not sought. Further, no evidence in that regard was led by the appellant. As held in *Josphine James* (supra), without such permission being sought and granted by the Claims Tribunal, it would not be permissible to raise such specific defence. It is, thus, found that the Claims Tribunal rightly held that the appellant was also liable to satisfy the Award.

7 In view of aforesaid discussion, there is no case made out to interfere with the impugned judgment. The said judgment stands confirmed. The First Appeal is accordingly dismissed with no order as to costs.

The amount of Rs.25,000/- along with the accrued interest shall be transferred to the Motor Accident ClaimS Tribunal, Mumbai. The original claimant is at liberty to withdraw the entire amount of compensation with accrued interest.

Needless to say that it is open for the appellant to proceed against the insured-respondent No.2 in accordance with law.

(A.S. CHANDURKAR, J.)