IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 CIVIL APPLICATION NO.9253 OF 2013
IN FA/469/2013

NEW INDIA ASSURANCE CO. LTD.

VERSUS

ROHINI RAJENDRA KASAR AND ORS

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Mr. S.G. Chapalgaonkar, Advocate for the applicant

Mr. M.M. Bhokarikar, Advocate for the respondent Nos.1 and 3

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 31^{st} JULY, 2019

<u>PER COURT</u> :

1 Present application has been filed by the insurance company for permitting to place on record report of Investigating Officer appointed by it and the communication made by the appellant-applicant with Licensing Authority, Public Motor Vehicle Department, Barrackpore in West Bengal.

2 Heard both sides. By this application, it can be said to be under Order 41 Rule 27 of the Code of Civil Procedure, 1908. The appellant-applicant wants to produce those documents on record stating, that it had raised the defence in respect of driving licence of the offending vehicle before

the learned Tribunal. However, it was based on the documents, at that time, before the learned Tribunal. A photo copy of the driving licence was made available by the police authority. It is stated that on the perusal of the said photo copy, it appeared that the driving licence was valid on the date of the accident. Thereafter, the matter proceeded for evidence. In the meantime, the said photo copy was sent by the applicant for verification and the investigator was appointed to make the investigation, who has submitted the report after the Judgment and Award, that has been passed. The remarks given by the Licensing Authority were that the driver of the offending vehicle was not holding valid and effective driving licence on the date of the accident, and it is stated that a fake document was produced. It is stated by the applicant that the it had no opportunity to raise this point before the learned Trial Court and inspite of due diligence these documents could not be brought on record before the Tribunal.

3 The learned Advocate appearing for the respondents-claimants is strongly objecting to the application, on the ground that those subsequent developments cannot be considered, as there was huge delay.

4 It will not be out of place to mention here that the learned Advocate for the applicant has vehemently submitted his argument supporting the application stating that since the driver had obtained driving

licence from the Barrackpore, West Bengal, it was difficult for the insurance company to get necessary information. In fact, when the photo copy was submitted by the police authorities, so also, by the owner-respondent No.1, apparent document was showing that there was driving licence with the driver of the offending vehicle. In the written statement defence of denial was raised. However, taking into consideration those documents, evidence could not be led. When the learned Advocate representing the insurance company raised suspicion about that document, further steps have been taken to get the said license verified. He also submitted that since the point regarding fake driving licence would be involved, there would be no prejudice to the claimants, when the entire decreetal amount has been deposited by the insurance company in this Court and part of it has been allowed to be withdrawn by the claimants. He also submitted that, in case, the insurance company succeeds, at the most it can canvass for the order of pay and recovery, which cannot be said to be against the claimants.

5 The first and the foremost fact, that is required to be noted is that the petition was presented on 27.09.2006 and the claim petition was decided on 15.10.2011. So, for about 5 years and 18 days the matter was pending before the Tribunal for adjudication. Merely because certain documents have been produced either by police or by the concerned owner,

could not have estopped the insurance company from having verification of the documents, before the defence is placed on record. At the most, it can also be said that since in the written statement defence of denial has been taken, the investigation or verification could have gone beyond the date of filing of written statement and then till the decision could have been given by the Tribunal, the driving licence could have been got verified by appointing investigator. Raising of suspicion at a late stage and then taking steps cannot be the ground to have belated submission of papers and in that case the provision of Order 41 Rule 27 of CPC cannot come to the help of insurance company. The application is very much silent on the point giving reasons for such late investigation. All the defences will have to be raised at the trial stage, which requires evidence. Now, by saying that the claimants will not be put to peril one cannot justify the belated action on the part of the applicant. Under such circumstance, the application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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