IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 2041 OF 2019
IN
FIRST APPEAL (ST) No. 5941 OF 2019

The United India Insurance Co. Ltd. ...Applicant
Vs.
Mr. Rafiq Abdul Shaikh and Anr. ...Respondents

Mr. S.S. Jinsiwale for the Applicant

CORAM: K.K. TATED, J.

DATED : JUNE 19, 2019

P.C. :

1. Heard learned counsel Mr. S.S. Jinsiwale for the Applicant.

2. By this Civil Application, the Applicant is seeking stay of the operation and implementation of the order dated 13th November, 2017 passed by the Motor Accident Claim Tribunal, Mumbai below Exhibit -2 in M.A.C.P. No. 1176 of 2016 on application filed by the respondents/ Original Claimants under Section 140 of the Motor Vehicles Act, directing Insurance Company to deposit sum of Rs.25,000/- to the Applicant on account of No Fault Liability.

3. Mr. S.S. Jinsiwale for the Applicant submits that the accident occurred on 15th May , 2016 and the original Insurance Policy was issued for the period 20.12.2014 to 29.12.2015 and not for the period 30.12.2015 to 29.12.2016 and therefore, on the day of the accident risk was not covered by the Appellant and, therefore, the Appellant is not liable to pay any amount on the basis of the fake policy document.

This fact was not considered by the Trial Court at the time of passing the impugned order. He submits that the advocate appeared in the lower court on behalf of the Appellant made the statement and confirmed police document orally without the knowledge of the Appellant and without any instruction. He submits that they have good chance of success in the present proceedings. He submits if the entire awarded amount is recovered by the Respondents/ Claimants by filing execution application, then nothing will survive in the present First Appeal.

4. The learned counsel for the Applicant submits that he received instructions to make a statement before this Court that, the Applicant is ready and willing to deposit the remaining awarded amount within four weeks from today. He submits that, during the pendency of the First Appeal, this Hon'ble Court be pleased to stay the operation and implementation of the impugned award dated 13th November, 2017.

5. Considering the submissions made by the learned counsel for the Applicant. the averments made in the civil application and as the Applicant is ready and willing to deposit the remaining amount in Tribunal within four weeks from today, I am satisfied that the Applicant has made out a case for allowing this civil application.

6. Hence, following order:

(a) Civil Application is allowed in terms of prayer clause (b), on condition that, the Insurance Company to deposit the remaining awarded amount in tribunal within four weeks from today failing which civil application shall stand dismissed without referring back to the Court. Prayer clause (b), which reads thus:

> “(b) Pending the hearing and final disposal of the present Appeal

this Hon'ble Court be pleased to stay the operation, execution, implementation, effect and further proceedings pursuant to the impugned order dated 13th November, 2017, passed by the Learned Member of M.A.C.T., Mumbai, below Exhibit -2 in M.A.C.P. NO. 1176 of 2016.”

(b) If the amount is deposited within stipulated time as stated hereinabove, the Tribunal is directed to invest the same in fixed deposit of any Nationalized Bank, initially for a period of one year and same to be continued till further orders.

(c) Liberty is granted to the Original Claimants, if they so desire, to prefer appropriate application for withdrawal of the amount and that application be decided on its own merits.

(d) Civil Application stands disposed of accordingly.

(e) No order as to costs.

(**K. K. TATED, J.**)