IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL JURISDICTION

CIVIL APPLICATION NO. 106 OF 2010
IN
FIRST APPEAL (ST) NO. 842 OF 2010
WITH
CIVIL APPLICATION NO. 107 OF 2010

United India Insurance Co. Ltd. .. Applicant

Versus

Smt. Nafisa Shabbir Dhundia & Anr. .. Respondents

WITH
CIVIL APPLICATION NO. 1157 OF 2019

Smt. Nafisa Shabbir Dhundia .. Applicant

In the matter between

The United India Insurance Co. Ltd. .. Appellant

Versus

Mrs. Nafias Shabbir Dhundia and Anr... Respondents

…

Mr. Amol A. Gatne for the Applicant in CAF No. 106/2010 and 107/2010.

Mr. S. R. Chavanke for the Original Respondent No.1 in CAF Nos. 106/2010 and 107/2010 and for the Applicant in CAF No. 1157/2019.

CORAM: BHARATI DANGRE, J.

DATED : 30th AUGUST, 2019.

P.C:-

1. The present First Appeal depicts a picture of how the proceedings die own death since, they pend before the Court and are not taken out for hearing.

2. The First Appeal (Stamp) No. 842/2010 came to be filed before this Court by the United India Insurance Company Limited, being aggrieved by the order passed by the Motor Accident Claims Tribunal, Palghar in M.A.C.P. No. 71/2006 to 74 of 2006 vide its judgment dated 20th July, 2009. The Insurance Company is aggrieved by the alleged erroneous findings recorded by the M.A.C.T. in regard to the nature of policy that "it was a Package policy and not an Act policy."

3. I do not intend to comment on the merits of the matter but suffice to say that said First Appeal came to be instituted and alongwith it Civil Application Nos. 106/2010 and 107/2010 seeking condonation of delay. On 15th January, 2010, notice came to be issued and ad-interim relief in terms of prayer clause (b) was granted, subject to stipulation of deposit of the entire decretal amount inclusive of interest in this Court within a period of 4 weeks. On 5th March, 2010, the time for depositing

the decretal amount was extended. On 17th March, 2010, this Court noted that the respondent No. 2 has not been served since the appellant did not furnish correct address of respondent therefore, conditional order came to be passed to the following effect "if the Insurance Company does not furnish correct address of the respondent within 4 weeks from today, the Civil Application will stand dismissed without further reference to the Court." On the address being furnished the notice was directed to be issued. The matter was again listed after long gap and the Registrar passed conditional order on 1st July, 2015, granting time to supply the copies till 29th July, 2015. However, since the said order also not complied with, Civil Application No. 106/2010 alongwith 107/2010 were dismissed against respondent No. 2 for non compliance of the order dated 1st July, 2015. The proceedings therefore, continued against the respondent No. 1, the Claimant.

4. On perusal of the impugned order, it appears that the respondent No. 1 and 2 have been held jointly and severally liable to pay the amount to the claimant by way of compensation for the death of one Sirajbhai for the injury sustained and in the four M.A.C.P. Petitions' distinct amount of compensation was directed to be paid. The amount of compensation in terms of the Civil Application was deposited in this Court and Civil Application No. 1157/2019 is taken out by Smt. Nafisa Dhundia to withdraw the said amount of Rs.1,76,390/- deposited by the

Insurance Company in this Court. The application proceeds to cite the reason why this amount is earnestly required. It also invite deplorable and miserable contention of the applicant and it also make grievance that though the compensation is awarded long back in the year 2010, the Claimants are not yet given fruits of the said compensation.

5. I have heard the learned counsel for the Insurance Company as well as the learned counsel for the respondent No. 1 on the Civil Application No. 1157/2019. The learned counsel for the Insurance Company graciously submits that he has no objection for the claiming withdrawal of the amount, however, the claim which the Insurance Company intends to prosecute is against the respondent No. 2. He also invited my attention to the order passed by the learned Single Judge and submits that other Appeals against the Claimants are also admitted. I quite see the anxiety of the claimant to receive the amount and therefore, since the amount is already deposited in pursuant to the direction of this Court, I am inclined to permit the applicant in Civil Application No. 1157/2019 to withdraw the amount of Rs.1,76,390/- deposited by the Insurance Company in this Court.

6. In light of the said permission granted, Civil Application No. 1157/2019 is made absolute in terms of prayer clause (a).

7. As far as contention of the learned counsel for the Insurance Company is concerned, office record clearly reflects that Civil Application Nos. 106/2010 and 107/2010 are dismissed against the respondent No. 2. The Insurance Company has no serious claim or contest against the respondent No. 1 and in such circumstances, when there is no claim for adjudication pending in this Court as against the respondent No. 2, I see no reason why the First Appeal should keep pending since, it is not yet registered and even Civil Applications are dismissed as against respondent No. 2. In such circumstances, the First Appeal (Stamp) No. 842/2010 is concise of this, in view of the fact that it do not survive for adjudication.

SMT. BHARATI DANGRE, J.