IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CIVIL APPLICATION (CAF) NO.1832/2018
IN
FIRST APPEAL(St) NO.12117/2018

Reliance General Insurance Co. Ltd.,
Vs.
Mukesh Kamal Samudre and another

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. D.N. Kukday, Advocate for appellant.
Mr. Sawan Alaspurkar, Advocate for respondent No.1.

CORAM : NITIN W SAMBRE, J.
DATE : SEPTEMBER 30, 2019.

Civil Application NO.1832/2018

. In view of no objection extended by the learned counsel for the respondent No.1, delay stands condoned. the application for condonation of delay is allowed.

2. The Civil Application stands disposed of.

First Appeal (St) No.12117/2018

. This appeal preferred by the Insurance Company original respondent No.2 before the Claims Tribunal questioning the award of compensation dated 02.01.2018 in M.A.C.P. No.56/2012.

2. The claimant who has injured in an accident took place on 17th July, 2010 hit by an Indica Car bearing Registration No.MH-12/EG-1753, was awarded

compensation of Rs.70,000/-, considering the nature of injuries suffered to the claimant.

3. Shri Kukday, learned counsel for the appellant while questioning the aforesaid award would urge that in the aforesaid accident in all three Claim Petitions were registered one of which is M.A.C.P.No.391/2010 against which First Appeal No.358/2018 is already admitted by this Court. As such, he submits that the present appeal also needs admission.

4. Mr. Kukday, learned counsel for the appellant would urge that the cheque which was issued for payment of premium to the appellant was dishonoured, of which an intimation was given to the vehicle owner on May, 14 2010. According to him, the vehicle owner was proceeded ex-parte. In view of above, this Court need to draw adverse inference against vehicle owner and prayed for an order of pay and recover.

5. Mr. Alaspurkar, learned counsel for the respondent No.1 would support the award of Claims Tribunal. According to him the burden on the appellant i.e. Insurance Company of proving the fact of dishonour of cheque of premium and a written intimation to the vehicle owner to that effect is not proved. As such, he sought

dismissal of the present appeal.

6. Considered the rival submission of learned counsel for the parties.

7. Insurance Policy is at Ex. 38 which was issued for a period of from 8.05.2010 to 7.05.2011. The date of accident is July, 17 2010. Though it is claimed that an intimation was given to the vehicle owner about dishonour of cheque on May, 17 2010, the fact remains that neither such intimation nor dishonoured cheque was brought on record and proved by the witness of the appellant by entering into witness box and deposing to that effect.

7. As the appellant has failed to discharge the burden, in my opinion, no case for interference is made out in this appeal. The appeal fails. Hence it is hereby dismissed.

(NITIN W. SAMBRE, J.)

Manisha