Bharat D. Pandit
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 71 OF 1994

THE ORIENTAL INSURANCE)
COMPANY LIMITED,)
City Branch Office, Saraswati)
Vilas Building, Kunte Chowk,)
Laxmi Road, Pune 411030) .....Appellant
(Orig. Defendant)

V/s

SHRI DILIP DNYANOBA KUNJIR,)
aged about 23 years, occupation)
Business, residing at Alaknanda)
Apartments, Mukundnagar,)
Pune 411037.) ..... Respondent
(Orig. Plaintiff)

Mr. Ketan Chothani i/b Mr. M.G. Barve for the Appellant.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 02, 2020

ORAL JUDGMENT:

1] Heard learned Counsel for the Appellant.

2] A suit for recovery of an amount of Rs 37,160/- initiated on

06/08/1988 in the Court of Civil Judge, Senior Division, Pune, being Special Civil Suit No. 765 of 1988 came to be dismissed. Feeling aggrieved thereby, Respondent/original Plaintiff preferred an appeal being Civil Appeal No.247 of 1991. The said appeal came to be allowed vide impugned judgment and order dated 18/09/1993. As such, this Second Appeal.

3] The Respondent/Plaintiff claims to be the owner of goods truck bearing No. MWC-4092 which was insured with the Appellant, covering comprehensive risk i.e. liability towards third party and also accidental damage to the said vehicle. Against accident dated 08/08/1985, it is alleged that the Appellant refused to grant compensation, resulting into filing of the suit.

4] Amongst other, defences raised in the suit was, the Respondent/Plaintiff was incompetent to enter into contract with the Appellant-Insurance Company. The trial court answered the same in favour of the Appellant, whereas lower Appellate Court reversed it.

5] In the aforesaid backdrop, question of law which is sought to be

agitated is, “whether the lower Appellate Court committed an error in allowing the suit claim contrary to the provisions of the Indian Contract Act and the Motor Vehicles Act?”

6] According to the learned Counsel for the Appellant, Respondent/Plaintiff has admitted in his cross-examination that his date of birth was 23/03/1969 and as such, on the date of issuance of the insurance policy i.e. 10/06/1985, Respondent/Plaintiff was 16 years of age and as such, was not competent in law to enter into contract. He would invite attention of this Court to the period for which the vehicle was insured with the Appellant i.e. 10/06/1986 to 09/06/1986 and the date of accident of the vehicle.

7] My attention is invited to the provisions of Sections 10 and 12 of the Indian Contract Act so as to canvass that the Respondent/Plaintiff was not competent in law to enter into contract. It is claimed that the contract by incompetent person is a void contract and cannot be enforced.

8] As far as case in hand is concerned, it is not in dispute that the

vehicle was insured with the Appellant, before which it was registered with the registering authority. The Appellant claims to have extracted in cross-examination of the Plaintiff, admission that on the date of issuance of policy, he was 16 years of age. The fact remains that, in the case in hand, Appellant has accepted the amount of premium from minor, knowing fully well that vehicle is registered in his name. In the evidence, Appellant is unable to demonstrate that the Respondent/Plaintiff has suppressed the fact that he was a minor at the time of the agreement. In the case in hand, Appellant has received consideration for agreement as defined under Section 2(e) of the Indian Contract Act. Such receipt of consideration is against the promise in favavour of the minor and such promise is held to be enforceable by minor or on his behalf.

9] In the aforesaid backdrop, the claim that the contract is not enforceable being void cannot be accepted. There is no substance in the Second Appeal. Second Appeal fails and the same stands dismissed.

(NITIN W. SAMBRE, J.)