IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAF] No.2149 of 2019
in
First Appeal St.No.791 of 2019

National Insurance Company Limited
vs.
Shri Manik s/o Ramchandra Sangale & another

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	*Court's or Judge's Orders*

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Ms. Monika Ukale, Advocate h/f Mrs. Gauri Venkatraman, Advocate for the Applicant-Appellant.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 20th JANUARY, 2021.

By this application, the applicant has sought to condone the delay of 220 days in filing the appeal.

02] In view of the reasons stated in the application in paragraph 3 of the application, delay is condoned. The application stands disposed of.

First Appeal St.No.791/2019 :

Heard learned Counsel for the appellant.

02] The appellant herein has challenged the judgment and award dated 21/02/2018, whereby the Claims Tribunal has awarded compensation of Rs.28,000/- to respondent No.1, in view of the injuries sustained by him on 30/07/2008 in a motor vehicular accident, involving the Truck bearing No.MP-09-KC-9208.

03] Respondent No.1 was a pillion rider on a motorcycle bearing No.MH-28-N-2948. While they were proceeding towards Deulgaon Raja, a Truck bearing No.MP-09-KC-9208, dashed against the motorcycle, as a result thereof, the claimant sustained injuries. The claimant filed an application under Section 166 of the Motor Vehicles Act seeking compensation of Rs.1,00,000/- from the owner and the insurer of the Truck.

04] The appellant denied having insured the Truck involved in the incident and, therefore, denied that its liability to indemnify the owner. The Claims Tribunal rejected the contentions raised by the appellant-Insurance Company and held that owner and the appellant-Insurance Company are jointly and severally liable to pay respondent No.1-claimant an amount of Rs.28,000/-.

05] Learned Counsel for the appellant contends that respondent No.2-insured had failed to produce the original insurance policy. Learned Counsel for the appellant submits that the Claims Tribunal has grossly erred in holding that the offending vehicle was insured by the appellant and further in fastening the liability to indemnify respondent No.2.

06] The only question, which falls for consideration, is whether the offending Truck was insured with the respondent-Insurance Company. In this context, it is pertinent to note that respondent No.1-claimant had specifically averred that the vehicle was insured with the appellant-Insurance Company. Paragraph 14(F) of the application also reveals that respondent No.1-claimant had filed copy of the cover-note along with other documents. The appellant-Insurance Company, as observed by the Claims Tribunal, had not specifically denied that the vehicle was insured and had not doubted the genuineness of the cover-note referred to in paragraph 14(F) of the application, but had averred in paragraph 3 that "*In the absence of policy confirmation, it is denied that at the relevant time, vehicle Truck No.MP-09-KC-2908 was insured with this opponent. Whenever opponent No.1 filed copy of policy and thereafter admit the same, till then insurance of vehicle in question is denied*".

07] In paragraph 23 of the impugned judgment, the Claims Tribunal has observed that respondent No.1-claimant had produced the policy, which indicates that the vehicle was duly insured as on the date of the accident. It is not in dispute that the appellant-Insurance Company had not adduced any evidence to controvert the case set up by respondent No.1-claimant. Under the circumstances, the Claims Tribunal has not committed any error in fastening the liability on the insured as well as the insurer i.e. the appellant-Insurance Company. The findings recorded by the Claims Tribunal are based on evidence on record. There being no manifest error either of facts or law, the impugned judgment does not warrant any interference. Hence, the appeal is dismissed.

JUDGE

**sandesh*