Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.22 OF 2009
WITH
STAMP NUMBER (APPLN) NOS.1514 & 1515 OF 2020

Bajaj Allianz General Insurance Co. Ltd. 3C & 3D, Sesa Ghor, 3rd Floor, Patto Plaza, EDC Complex, Panaji-Goa. …. Appellant.

Versus.

1. Smt. Jayanti R. Chari,
w/o. Late Ramakant K. Chari,
aged 52 years, housewife,
r/o. House No.299, Khareband,
Margao, Salcete, Goa

2. Siddesh R. Chari,
son of late Ramakant K. Chari,
aged 28 years, bachelor, r/o. House No.299, Khareband, Margao,
Salcete, Goa.

3. Shri Rudresh R. Chari, son of late Ramakant K. Chari, aged 26 years, bachelor, r/o. House No.299, Khareband, Margao, Salcete, Goa.

(4. Shri Moses A. Godinho,
son of Anthony Godinho, major in age, resident of Flat No.1, Ground Floor, Saraswati Bhavan, Krantinagar, Porvorim, Bardez, Goa) dismissed as per order dated 8/3/18. ….. Respondents.

Mr. Amey Kakodkar with Mr. Pankaj Shirodkar, Advocates *for the Appellant.*

Mr. P. Sawant, holding for Mr. V. Naik. Advocate *for the Respondents No.1 to 3.*

CORAM : M. S. SONAK, J.

DATE : 7th July 2022

ORAL JUDGMENT. : -

1. Heard Mr. Kakodkar for the Appellant-Insurance Company.

2. This Appeal is directed against the Judgment and Award dated 5th September 2008, made by the Motor Accident Claims Tribunal at Margao (Tribunal) in Claim Petition No.118/2006.

3. Because of the demise of late Ramakant Chari in a vehicular accident, his widow and two sons were awarded compensation of ₹4,34,500/-, together with interest at the rate of 9% per annum from the date of the claim petition. The Appellant's claims that there was no valid insurance or that the driver of the offending vehicle had no proper license were rejected by the Tribunal. Respondent No.4 in this Appeal is the owner/driver of the offending vehicle.

4. Mr. Kakodkar submitted that the Appellant might not have much grievance about the compensation awarded to the Claimants. However, he submits that this was a case where Respondent No.4 issued a cheque for a premium, but such a cheque was dishonored. He submits that the insurance policy issued was subject to the realization of the cheque. Therefore, he submits that there was no valid insurance policy, and the Tribunal should have at least made an order to pay and recover. Mr. Kakodkar submits that the evidence on record also establishes that Respondent No.4 had no proper driving license at the time of the accident and, therefore, there was a fundamental breach of the insurance policy, assuming that there was a valid insurance policy.

5. Mr. Kakodkar admitted that this Appeal stood dismissed as against Respondent No.4 because there was no service on Respondent No.4. He submits that the Advocate who was handling the matter failed to inform the Insurance Company about the non-service and even about the dismissal of this Appeal against Respondent No.4. He submits that Stamp Number

(Appln.)No.1515/2020 has been taken out to seek condonation of delay in seeking restoration. Similarly, Stamp Number (Appln.) No.1514/2020 has been taken out to seek restoration of the Appeal as against Respondent No.4. Mr. Kakodkar submits that for the failure of the Advocate, the Insurance Company must not be made to suffer and, therefore, both these applications may be allowed.

6. This is an Appeal of the year 2009. The compensation amount, which is *prima facie* inadequate, has, to date, not reached the Claimants. Even today, no steps are taken to serve Respondent No.4 in two Misc. Civil Applications. Grant any additional time would be unjust to the Claimants who have yet to receive the compensation due to a tussle between the insurer and insured.

7. In Stamp Number (Appln.) No.1515/2020, the Insurance Company seeks condonation of delay of 912 days in seeking restoration. The only reason is that their previous Advocate gave no intimation to the Insurance Company. This reason hardly inspires any confidence. In such matters, it is very easy to blame Advocates and, on such a basis, seek condonation of delay. However, there is no explanation as to why the officers of the Insurance Company did not pursue the matter with their Advocate for this length of time. Therefore, there is no case for condoning this delay of 912 days in even seeking restoration. Therefore, Stamp Number (Appln.) No.1515/2020 is liable to be dismissed and is hereby dismissed. As a consequence, Stamp Number (Appln.) No.1514/2020 also does not survive, and the same is also dismissed.

8. Notwithstanding the above dismissal, Mr. Kakodkar was heard in the matter. The Tribunal has given cogent reasons for rejecting the Appellant's contention qua Respondent No.4. Whatever the dispute between the Appellant and Respondent No.4 may be, this is not a case where the Claimants should be deprived of the compensation amount.

9. Upon cumulative consideration of the above factors, this Appeal is liable to be dismissed. Accordingly, First Appeal No.22/2009 and Stamp Number (Appln.) No.1514/2020 and Stamp Number (Appln.) No.1515/2020 are hereby dismissed.

10. The Claimants will be entitled to withdraw the amount that the Appellant-Insurance Company has deposited in this Court, together with the interest that shall have accrued on this amount. Respondents No.1 to 3 (Claimants) to furnish identification papers and bank details so that the Registry can transfer the amount directly into their Bank account.

11. There shall be no order for costs.

M. S. SONAK, J.

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