Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.43 OF 2015

THE NEW INDIA ASSURANCE CO.LTD,
THROUGH ITS MANAGER. ... APPLICANT

Versus

USHA SURYAKANT SANKHALKAR AND 2 ORS., ... RESPONDENTS

Mr. P. Shirodkar, Advocate with Mr. Amey Kakodkar, Advocate for the Applicant.

CORAM:- M. S. SONAK, J.

DATED :- 22nd December, 2023

P.C.

Heard Mr. Shirodkar, learned Counsel for the Applicant.

2. By a separate Order, this Civil Revision Application, which was dismissed for non-prosecution, has been restored.

3. The only challenge pressed in this Revision Petition is that the driver of the vehicle in the accident i.e. Respondent no.2 was driving under the influence of alcohol and, therefore, the Applicant-Insurance Company, should be relieved of the liability of paying any compensation. Accordingly, this Revision was dismissed as against the claimants but was admitted to examine whether the Insurance Company should be relieved of its liability so that atleast a pay and

recovery Order could be made.

4. Mr. Shirodkar referred to the deposition of Aw.3 i.e. the I.O., who inquired into the accident. He pointed out that this Aw.3 has clearly deposed that the driver Rama Jadhav drove the jeep which caused the accident under the influence of alcohol. Mr. Shirodkar submitted that based on this evidence, a case is made out for making a pay and recovery order.

5. Upon due consideration of the above contention, the same cannot be accepted. Though Aw.3, the I.O. did refer to Rama Jadhav driving the jeep under the influence of alcohol, the Insurance Company led no evidence of either the Doctor or of any other person to establish that Rama Jadhav was indeed driving under the influence of alcohol at the time of the accident.

6. Besides, the mere statement of the I.O. that the driver was driving under the influence of alcohol for the fact that a criminal prosecution is launched against the driver, is not by itself sufficient to establish any offence or any fundamental breach of the terms of the Insurance policy. It is well settled that the burden of establishing the breach of the terms of the Insurance policy is on the Insurance Company.

7. There is no evidence about the level of alcohol content, if any, in the driver's bloodstream. The Insurance Company did not lead any

evidence or produce on record the Insurance policy and establish what were the precise terms and which of such terms were actually breached. In the absence of all such evidence and going merely by Aw.3's statement that according to him the driver was under the influence of alcohol, would not be appropriate to discharge the Insurance Company of its liability.

8. For the above reasons and without going into the issue as to whether a revision application was maintainable or not, the same is hereby dismissed. There shall be no Order as to costs.

M. S. SONAK, J.

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
Date: 2023.12.22 15:29:22 +05'30'