Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1022 & 699 OF 2019

WRIT PETITION NO.1022 OF 2019

Dattaprasad Shivanand Nadkarni
Sawardekar, 42 years of age,
S/o. Shivanand Nadkarni Sawardekar,
Resident of H. No. 216, Dattawadi,
Savordem, Curchorem — Goa. ....Petitioner

Versus

1. Mrs. Diya Vishal Naik,
Major of age,
W/o. late Vishal D. Naik,

2. Miss. Vidiya Vishal Naik,
Minor, D/o. late Vishal D. Naik,
Represented by respondent no.1, herein

3. Devidas M. Naik,
Major of age, S/o. Mahadev Naik.

4. Smita Devidas Naik,
Major of age, W/o. Devidas M. Naik,

All above residents of H. No. D-61,
Digas, Panchawadi,
Ponda - Goa. 403 706.

5. Santosh Nagesh Chikode,
Major of age, S/o. Nagesh Chikode,
Resident of H. No.460/M, Baagwada,
Sanvordem — Goa.
6. Bajaj Allianz General Insurance Co.
Ltd., Office no. 3, C-D, 3rd floor,

Sesa Ghor, EDC Complex, Patto,
Panaji, Goa. 403 001. ….Respondents

WITH
WRIT PETITION NO.699 OF 2019

Dattaprasad Shivanand Nadkarni
Sawardekar, 40 years of age,
S/o. Shivanand Nadkarni Sawardekar,
Resident of H. No. 216, Dattawadi,
Savordem, Curchorem — Goa. ….Petitioner

Versus

1. Mrs. Diya Vishal Naik,
Major of age,
W/o. late Vishal D. Naik,

2. Miss. Vidiya Vishal Naik,
Minor, D/o. late Vishal D. Naik,
Represented by respondent no.1, herein

3. Devidas M. Naik,
Major of age, S/o. Mahadev Naik.

4. Smita Devidas Naik,
Major of age, W/o. Devidas M. Naik,

All above residents of H. No. D-61,
Digas, Panchawadi,
Ponda - Goa. 403 706.

5. Santosh Nagesh Chikode,
Major of age,
S/o. Nagesh Chikode,
Resident of H. No.460/M,
Baagwada, Sanvordem — Goa.
6. Bajaj Allianz General Insurance Co.
Ltd., Office no. 3, C-D, 3rd floor,

Sesa Ghor, EDC Complex, Patto,
Panaji, Goa. 403 001.

7. Ponda Police Station,
through Officer in charge,
Ponda-Goa. ....Respondents

Mr A.D. Bhobe, Advocate *for the Petitioner.*
Mr Amey Kakodkar, Advocate *for Respondent No.6.*

CORAM: M. S. SONAK, J.

DATE : 10th MARCH 2023

ORAL JUDGMENT :

1. Heard Mr Bhobe for the Petitioner and Mr Kakodkar for respondent no.6. Mr Bhobe states that the other respondents have been duly served in these two petitions.

2. Rule. The rule is made returnable forthwith with the consent of the learned Counsel for the parties.

3. Since the impugned orders arise out of Claim Petition No.2/2017, it is appropriate that a common order disposes of both these petitions.

4. In Writ Petition No.699/2019, the Petitioner, the owner of Hero Honda motorcycle bearing registration no.GA-09-F-6562 challenges the order dated 13.06.2019 by which he was directed by the Motor Accident Claims Tribunal (Tribunal) to produce Insurance

Policy no.OG-16-3255-1802-00000502 issued by Bajaj Allianz General Insurance Company Ltd.

5. In Writ Petition No.1022/2019, the same Petitioner challenges the order dated 25.07.2019, closing his evidence and the order dated 19.09.2019, dismissing the application at Exhibit 50 for reopening the closed evidence.

6. The Petitioner has secured an ad interim ex-parte stay to the proceedings before the Tribunal. Due to this stay, the claimants cannot pursue their Claim Petition before the Tribunal. The claimants are the widow, children and parents of deceased Vishal Naik, who died in a vehicular accident involving the Petitioner's Hero Honda motorcycle. Though this accident occurred on 02.02.2016, the claimants are without any compensation to date.

7. Mr Bhobe refers to the communication dated 06.07.2016 addressed by Public Information Officer, Sub-Division Police Officer (Ponda) to one of the claimants, furnishing this claimant certain documents like driving licence and Insurance Policy, possibly to file and pursue the Claim Petition. He submits that from these documents, it is clear that it is the police authorities who have the original Insurance Policy, which the impugned order in Writ Petition No.699/2019 directs the Petitioner to produce. His main argument is that since the original Insurance Policy was handed over to the police, as confirmed by communication dated 06.07.2016, no direction could have been issued to the Petitioner to produce the original of the said Insurance Policy.

8. Mr Bhobe submits that the main reason for closing the Petitioner's evidence is the inability expressed by the Petitioner to produce the original policy, which according to the Petitioner, is with the police authorities. Therefore, he submits that the Petitioner's evidence could not have been closed based on this ground, and the impugned orders may be set aside.

9. Mr Amey Kakodkar, learned Counsel for the Insurance Company, submitted that the Insurance Policy produced by the claimants before the MACT is a fabricated document. He submitted that the Insurance Company had led evidence in the matter to the effect that this Insurance Policy was issued on 09.02.2016. He submits that the accident, in this case, occurred on 02.02.2016, and to cover the accident period, a fabricated Insurance Policy was produced. He submits that there is no basis for concluding that the Petitioner furnished the original policy to the police authorities. He pointed out that there is no evidence on this aspect.

10. Mr Kakodkar submitted that despite several opportunities, the Petitioner did not file an affidavit in lieu of examination-in-chief claiming that the policy was genuine or that the original had indeed been handed over to the police. For these reasons, he submitted that this Petition should be dismissed as otherwise serious prejudice will occasion the claimants.

11. The rival contentions now fall for determination.

12. Regarding the order dated 13.06.2019, it must be noted that the Petitioner, except for making a bald statement that the original copy of the Insurance Policy was handed over to the Ponda Police, has failed to produce any material whatsoever in support of this fact. The Petitioner did not even bother to apply to the Ponda Police to return this original policy because the same was required to be produced before the Tribunal. The Petitioner did not even urge a summons to the Ponda Police authorities to produce the original of this Insurance Policy if indeed the same was handed over by the Petitioner to the police authorities.

13. There is a serious issue with the Insurance Policy because the copy supplied to the claimant shows that the policy was issued on 01.02.2016 at 22.15. However, the accident occurred on 02.02.2016. The Insurance Company contends that this Insurance Policy is a fabricated document because, according to their records, it was issued only on 09.02.2016, almost a week after the accident.

14. Considering the seriousness of the issue, the Petitioner, if confident about his position, should have taken a proactive role and been diligent. Suppose, ultimately, it is found that the original policy allegedly given by him to the police was a fraudulent or fabricated document, then the Petitioner may have a lot of explaining to do. Perhaps, a criminal angle would also then arise, needing investigations.

15. Therefore, responsibility could not be shirked by merely delaying the proceedings before the Tribunal and even succeeding in obtaining an ex-parte stay from this Court to the detriment of the claimants. Accordingly, considered from such perspective, there is no error in the order dated 13.06.2019 and Writ Petition No.699/2019 is liable to be dismissed and is hereby dismissed.

16. The contention that the Petitioner's evidence was closed only because he could not produce the original Insurance Policy is incorrect. The records show that despite opportunities, the Petitioner filed no affidavit in lieu of examination-in-chief. Additionally, despite the last chance being granted, no affidavit was forthcoming. Therefore, on 25.07.2019, the Tribunal had no alternative but to close the Petitioner's evidence.

17. In the order below Exhibit 50 for the reopening of the closed evidence, the Tribunal has noted that the Petitioner, despite seeking time to file an affidavit stating that he does not have the original policy failed to file such an affidavit. Additionally, the Tribunal has noted that after the matter was placed for defence evidence, the Petitioner was granted three adjournments to file an affidavit in lieu of examination-in-chief and produce policy documents. However, despite such opportunities, no such affidavit was filed. The last chance was to be availed before 25.07.2019. On this date, the Advocate for the Petitioner chose to remain absent, and the Tribunal was forced to close the Petitioner's evidence.

18. The application at Exhibit 50, as was correctly observed by the Tribunal, discloses no reasons for absence on 25.07.2019. The only reason was that the Petitioner was out of station due to his "business meeting". The Tribunal has observed that no details are furnished. In any case, the Tribunal was justified in observing that if the Petitioner had time to attend his business activities and meetings, surely he should have filed the affidavit and deposed to the same on 25.07.2019. Already more than ample opportunities were granted to this Petitioner. The Petitioner could not have treated this matter with such casualness precisely because such casualness was at the cost of claimants whose Claim Petition was being delayed. The Tribunal correctly held that the closed evidence could not be reopened for such reasons. Accordingly, there is no error, much less, jurisdictional error in the impugned orders dated 25.07.2019 and 19.09.2019.

19. For all the above reasons, these petitions are dismissed with costs of ₹25,000/- payable by the Petitioner to the claimants. The costs should be deposited before the Tribunal within two weeks from today. Once the costs are deposited, the Tribunal should allow the claimants to withdraw the costs unconditionally. The Tribunal should ensure that the costs are recovered from the Petitioner.

20. The ex-parte stay on the proceedings is vacated. The Tribunal is requested to dispose of the Claim Petition as expeditiously as possible by, if necessary, summoning the police to depose on the policy issue and other matters. The issue of fraudulent or fabricated policy is a serious one. The same affects the right of the claimants to receive compensation expeditiously, the functioning of the insurance company and the administration of justice. The Tribunal must dispose of the claim petition within a maximum of six months from today.

21. The rule in these petitions stands discharged.

22. The parties to appear before the Tribunal on 15.03.2023 at 10.00 am and produce an authenticated copy of this order. Since the claimants have not appeared, the Tribunal should consider issuing a fresh notice to them or their Advocate.

M. S. SONAK, J.

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2023.03.13 14:09:07 +05'30'