IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.607 OF 2016

1. Smt. Konta Mahadev Lokhare,
Age: 35 years, Occ: Household,

2. Priyanka Mahadev Lokare,
Age: 16 years, Occ: Education,

3. Divya Mahadev Lokare,
Age: 14 years, Occ: Education,

4. Pandurang Mahadev Lokare,
Age: 10 years, Occ: Education,

5. Sou. Narmada Somnath Lokare,
Age: 60 years, Occ: Household,

6. Somnath Namdev Lokare,
Age: 65 years, Occ: Nil,
(Appellants No.2 to 4 being minor represented through Appellant No.1 Mother)

All R/o: Kedgaon, Tal. Karmala,
Dist. Solapur Appellants
...(Original Claimants)

Versus

1. Mr. Bheru Singh Solanki,
Age – Adult, Occu – Business,
R/o. Gandhrap, Teh Rashmi,
Dist. Chittorgarh (Rajasthan)

2. Bajaj Allianz General Insurance Co. Ltd. Near City Hospital, Old Employment Chowk, Solapur. Respondents
...(Original Respondents)

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Mr. R. S. Alange for the Appellants.
Mr. Sarthak Diwan for Respondent No.2.

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CORAM : SHIVKUMAR DIGE, J.

DATED : 24th MARCH, 2023

Oral Judgment :

1. The issue involved in this Appeal is claim against Insurance Company is dismissed.

2. It is contention of learned counsel for the Appellant that the Tribunal has dismissed the claim petition against the Insurance Company on the ground that the cheque which was issued by the owner of offending vehicle towards premium of insurance policy was dishonoured.

3. The learned counsel further submits that the Insurance Company had examined the witness to prove that notice was given to the owner of offending vehicle and intimation was given to RTO officer about dishonour of cheque, but in cross-examination the said witness admitted that I cannot tell whether RTO was intimated by Insurance Company about cancellation of insurance policy of opponent No.1. He further admitted that I have no documentary evidence like office copy of notice, postal receipt or acknowledgment receipt to show that we have intimated concerned RTO in respect of cancellation of insurance policy about the said vehicle involved in the accident. He had also not produced

any documentary evidence to show that notice was received by RTO. Inspite of these clear admissions given by witness examined by the Insurance Company, the Tribunal has dismissed the claim petition against Insurance Company which is improper. Hence, requested to allow the Appeal.

4. It is contention of learned counsel for the Appellant-Insurance Company that the cheque which was issued as a premium of Insurance Policy was dishonoured, accordingly the notices were sent to owner of offending vehicle and RTO Office and the witness had stated about sending of notice, the Tribunal has considered all the aspects while dismissing the claim petition against the Insurance Company. The order passed by the Tribunal is legal and valid and no interference is required in it. He relied on ***Branch Manager National Insurance Company Limited vs. Roshan Lokhande***[1].

5. I have heard both learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Solapur (for short 'the Tribunal').

6. The issue involved in this Appeal is whether notices of dishonoured of cheque were issued to owner of offending vehicle and RTO, served on them. To prove the defence the Insurance Company has examined their officer Sukhpreet Gurai at Exhibit-38, this witness has stated that cheque was issued by the owner of vehicle as premium of insurance policy and the said cheque was

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dishonoured due to insufficient fund. Hence, the insurance policy was cancelled vide *ab-initio*. Thereafter, the Insurance Company sent letter dated 3rd December, 2009 by RPAD to the owner of offending vehicle and the Insurance Company informed about the cancellation of insurance policy to RTO, in cross-examination this witness admitted that he has not produced the acknowledgment receipt of notice dated 3rd December, 2009 till today. He further admitted that he has no documentary evidence to show that, he has received the said notice and he cannot say whether RTO was intimated by Insurance Company about cancellation of insurance policy of opponent No.1 i.e. owner of offending vehicle. He further admitted that he had no documentary evidence like office copy of notice, postal receipt and acknowledgment receipt to show that they had intimated concerned RTO in respect of cancellation of insurance policy about the said vehicle involved in the accident. He further admitted that he has also not produced any document to show that notice was received by the RTO. From the evidence of this witness, it appears that no intimation given to the RTO about the cancellation of insurance policy and dishonour of cheque as well as there is no acknowledgment produced on record that the notice was sent to the owner of offending vehicle. I am unable to understand the observations of the Tribunal that as the cheque was dishonoured hence, insurance company is not liable to pay compensation. I am setting aside this observations, on the ground that no intimation was given to RTO about dishonour of cheque and cancellation of insurance policy as well as there is no postal acknowledgment of service of notice on owner of offending vehicle. I have gone through the case law cited by the learned counsel for Insurance Company the facts of cited case and present case are different, as in present case no intimation was given to RTO and there is no acknowledgment of receipt of service of notice on owner of offending vehicle. The Tribunal has calculated the compensation, but dismissed claim petition against insurance company. In view of above, I pass following order :-

<u>O R D E R</u>

(i) The Appeal is allowed.

(ii) The Respondent No.2/Insurance Company shall deposit the compensation along with interest as awarded by the Tribunal within six weeks after receipt of this order.

(iii) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

(SHIVKUMAR DIGE, J.)