IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 9 OF 2021

Relince General Insurance Co. Ltd.)
46-2, Floor Khinth Plaza)
Dnyaneshwar Paduka Chowk)
1184/4 Fergusson, Pune)
….Appellant/Org. Insurer

Versus

1. Shri Ganesh Barikrao Yede)
   Age 14 years, Occup- Education)
   ...Org. Applicant No.1

2. Somnath Barikrao Yede)
   Age-12 years, Occu-Education)
   ....Org. Applicant No. 2

3. Shri. Barikrao Manohar Yede)
   Age - 35 years, Occp- Agriculture)
   ....Org. Applicant No. 3

   All R/ at:)
   Yedewadi (Lingali), Tal. Daund, Dist - Pune)

4. Shri Ashok Pandurang Kharat)
   Age - 35 years, Occp- Driver)
   R/at Theor, Tal Haveli, Dist - Pune)
   ....Org. Respondent No. 2

5. Shri. Ajay Wamanrao Bhapkar)
   Age- Adult, Occu- Business)
   R/at Theor, Tal. Haveli, Dist - Pune)
   ....Org. Respondent No. 3
   ….Respondents

Mr. Rahul Mehta i/b KMC Legal Venture for the Appellant.

CORAM : S. G. DIGE, J.

DATE : 2nd MARCH 2023.

JUDGMENT :

1. The issue involved in this appeal is dishonoured of cheque which was issued as a premium of Insurance Policy.

2. It is contention of learned counsel for the Appellant that the cheque which was issued by owner of the offending vehicle as a premium of Insurance Policy was dishonored. The notice was sent to the insured and intimation was given to RTO about dishonor of cheque, thereafter, policy was cancelled, but this fact is not considered by the tribunal and has awarded compensation which is improper. Hence, requested to allow the appeal.

3. After service of notice none appears for the Respondents. Hence, I am deciding this appeal on merit.

4. I have heard learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short 'the Tribunal'), while allowing the claim petition the tribunal has observed that the main defense of Respondent No. 3 i.e. Insurance Company is that cheque given by (Respondent No. 2) owner of offending vehicle for purchasing the Insurance Policy was bounced but no evidence has been led by the Respondent No. 3/Insurance Company to show that the said cheque was bounced, it appears that the defense of breach of Insurance Policy is not proved by the Respondent No. 3. Hence, tribunal has allowed the claim petition.

5. In my view, when there was a specific defense of the Appellant/Insurance Company before the tribunal that the cheque was dishonored by which premium of Insurance Policy was paid then it was burden on the appellant to prove that the notice about dishonor of cheque was sent to insured and intimation was given to RTO Office. It is settled principle of law in absence of giving notice to insured and intimation given to the RTO office the plea dishonor of cheque can't be considered. The tribunal has rightly allowed the claim petition. The learned counsel for the appellant also failed to point out

from record that notices were sent to insured and RTO office. No witness was examined to prove that cheque was dishonored and notices were sent to Insured and RTO Office.

6. In view above appeal is devoid of merit and I pass following order.

ORDER

i. Appeal is dismissed. No order as to cost.

ii. The claimants are permitted to withdraw deposited amount along with accrued interest thereon.

iii. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

(S. G. DIGE, J.)