IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 1292 OF 2014

WITH
CIVIL APPLICATION NO. 827 OF 2011
IN
FIRST APPEAL NO. 1292 OF 2014

United India Insurance Company Limited)
Motor Third Party Hub)
Union Cooperative Insurance Building)
5th Floor, 23, Sir P. M. Road)
Mumbai – 400 001) ….Appellant
(Original Opponent No.3)

Versus

1. Smt. Shanaz Mohammed Gaziani)
   Age: 24 years, Widow of the deceased)
   …(Original Applicant No.1)

2. Master Abdul Rehman Mohd. Gazani)
   Age: 3 Years, Son of the deceased)
   …(Original Applicant No.2)

3. Amina Mohammed Gaziani)
   Age: 55 years, Daughter of the deceased)
   …(Original Applicant No.3)

4. Smt. Fatima Anwar Gaziani)
   Age: 55 years, mother of the deceased)
   …(Original Applicant No.4)

   Applicant No.2 and 3 are minor through)
   Mother and next friend Smt. Shanaz)
   Mohd Gaziani, All residing at)

Rehnuma Complex, Flat No. 307)
A-Building, B-Wing, Mumbra)
Dist- Thane)

5. Mr. Ganesh karkora)
3044, Azad Nagar, J. P. Road)
Andheri – West, Mumbai – 400 058)
…(Original Opponent No.1)

6. Mrs. Laxmi bhoir)
Kalra Prem Chawl, Military Road)
Kalina Post, Santacruz – East)
` ...(Original Opponent No.2)
….Respondents

WITH
CIVIL APPLICATION NO. 906 OF 2014
IN
FIRST APPEAL NO. 1292 OF 2014

Smt. Shanaz Mohammed Gaziani & Ors. ….Applicants

Versus

The United India Insurance Company Ltd. ….Respondent

Mr. Rahul Mehta i/b KMC Legal Venture for the Appellant.
Mr. Amrin Khan i/b Adv. A. M. Gokhale for the Respondent Nos. 1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 20th DECEMBER, 2023.

Oral Judgment. :

1. The issue involved in this Appeal is non issuance of Insurance Policy.

2. It is contention of learned counsel for the Appellant that Appellant had not issued Insurance Policy to the offending vehicle and for proving the said fact witness was examined before the Tribunal but this fact is not considered by the Tribunal and has passed the impugned judgment and award, which is not proper. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that Insurance Policy was produced before the Tribunal. The Claimant had produced certified copy of cash balance register issued by RTO office before the Tribunal, it was mentioned about the issuance of Insurance Policy in the RTO office record, in respect of offending vehicle. On that basis tribunal has passed the order, which is legal and valid and no interference is required in it.

4. I have heard both learned counsel. Perused judgment and award passed by the Motor Accident Claims Tribunal, Mumbai (for short “the Tribunal”).

5. It is contention of learned counsel for the Appellant that no Insurance Policy was issued in favour of the offending vehicle. To prove the defense the Appellant/Insurance Company has examined

the witness Smt. Chhaya Gholap at Exhibit-30, she has stated that the Insurance Company has filed the Policy No. 5893 at Exhibit – 31 issued in the name of Harinder Ahuja in respect of vehicle No. MH-06-8478. The validity period of policy was from 5th September, 2001 to 4th September, 2002. The said vehicle was goods vehicle. The policy was not issued to the offending vehicle.

6. It is contention of learned counsel for the Appellant that the policy mentioned by the Applicant in the application and, the alleged certificate number and policy number in respect of the offending vehicle are false. The offending vehicle was not insured with the insurer under the certificate and policy number mentioned by the Claimant. From the evidence of the witness examined by the Appellant Company, it establishes that offending vehicle was not insured with the insurer. The said certificate was not issued by the office.

While dealing with this issue, the Tribunal has observed that the Insurance Company, branch Borivali had issued the Policy bearing No.1 on 21st July, 2001 at about 14:00 p.m.. The period of policy was from 21st July, 2001 to 20th July, 2002. The Claimant has produced the xerox copy of the said policy. In addition to it, the claimant has produced the information supplied by the R.T.O. office, Andheri in which it is stated that the offending vehicle was insured with the United India Insurance Company by Certificate No. 25601. The Tribunal further observed that thereafter on 23rd July, 2001 the offending vehicle was came to be transferred in the name of Original Opponent No.2 and parries have signed the delivery note. It means that one day before the transfer, the offending vehicle was insured with insurer. At the time of transfer of any vehicle unless the vehicle insured, transfer cannot be effected by the R.T.O. Authority. In addition to the above stated evidence the claimant has filed xerox copy of the Cash Balance Register which shows that the offending vehicle was insured with the insurer, covering the date of the accident.

The Tribunal has further observed that, the evidence adduced by the insurer of Smt. Chaya Gholap. It appears from her evidence that Policy No.5893 was in respect of vehicle MH-06-8478 owned by Mr. Ahuja. This witness has stated that, the certificate of insurance filed by the Claimant was not issued by their office. The signature is not of their office. In cross-examination, this witness admitted that the xerox copy filed by the claimant bears the monogram of Insurance Company. She has admitted that their office has not informed any authority that they have not issued such Policy. She has not collected information from other division. The tribunal further observed that, the insurer have produced a certified copy of the Policy. However, the insurer have not produced the second copy of original policy which is kept by the Insurer Company for their office record. Payment register is also not produced by the Insurance Company.

Considering the evidence on record the tribunal has observed that the third party is not at all concerned with the mistake committed by the Insurance Company by issuing one policy in respect two vehicles. I do not find any infirmity in it. This court in the case of **New India Assurance Company Limited vs. Smt. Roshan Bi Magdum & Ors. [2005 (1) T.A.C. 331 (Bom.)]** has observed that R.T.O. certificate issued on the basis of record maintained by the office of the R.T.O, the record is maintained in discharge of official duty. The entry in R.T.O. record can be accepted as proof of insurance dependent on fact of its case.

7. In my view, in the present case the record from R.T.O. office was produced before the Tribunal, to prove that Policy was

issued by the Insurance Company. The Cash Balance register from R.T.O. Office was produced before the Tribunal. The witness Smt. Chaya Gholap in her cross examination, admitted that she had not cross checked with the other office about the issuance of Insurance Policy produced by the Claimant.

8. Considering the above reasons, the Appeal is of devoid of merit and I pass following order.

ORDER

i. Appeal is dismissed.

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

iii. The statutory amount Rs.25,000/- be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw, it as per Rule.

(SHIVKUMAR DIGE, J.)