IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 272 OF 2022

New India Assurance Co. Ltd.
Baramati Branch Office, Bhigwan Chowk, Baramati,
District Pune.
Through Mumbai Legal Hub, 41-B, 4th Floor, Maker
Tower – E, Near World Trade Centre, Cuffe Parade,
Mumbai - 400005 …. Appellant

Versus

1. Shalan Namdev Babar
   Age 55 years presently, Occ : Housewife,
   R/at Kandalgaon, Tal. Indapur, Dist. Pune
2. Parag Hanumant Tambe
   Age Adult, Occ : Business
   R/at 16/6, Raghudurg Apartment, Karve Road,
   Pune - 411004 …. Respondents

……….

Mr. Devendranath S. Joshi a/w. Mr. Pradyumna Thakurdesai, Advocate for the Appellant.
Mr. Bhalchandra S. Shinde, Advocate for Respondent No.1.
Mr. Pavan S. Patil a/w. Mr. Nitin Jagtap and Mr. Yash Gawade, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.
DATE : 12th DECEMBER, 2023

<u>JUDGMENT :</u>

1. The issue involved in this appeal is pay and recovery order passed by the Motor Accident Claims Tribunal, Baramati (for short “**the Tribunal**”).

2. It is the contention of learned counsel for the appellant that the owner of the offending vehicle had issued a cheque as a premium of Insurance policy but it was dishonored. Thereafter, a notice was issued to the owner of the offending vehicle but this fact is not considered by the Tribunal hence requested to allow the appeal. In respect of dishonored cheque it is contention of learned counsel for respondent No.2 that notice was issued after the accident. The notice was not given after dishonour of the cheque. But these facts are not considered by the Tribunal and has passed pay and recovery order which is not proper.

3. It is the contention of learned counsel for the respondent No.1-claimant that in companion matter the Tribunal has passed pay and recovery order which was not challenged by the appellant-Insurance Company and on the basis of that order, present order is passed which is under challenge as earlier order is not challenged by the appellant-Insurance Company. Hence appeal be dismissed.

4. It is the contention of learned counsel for the appellant-Insurance Company that cheque was issued on 26.12.2012 and accident occurred on 30.12.2012 and thereafter notice was issued on 03.01.2013.

5. I have heard all learned counsel. Perused the Judgment and Order passed by the Tribunal. It is the contention of learned counsel for the appellant that pay and recovery order should not have been passed by the Tribunal. In my view, in the companion matter out of the said accident the Tribunal has passed pay and recovery order but it was not challenged by the appellant-Insurance Company and on the basis of that order in the present case the Tribunal has passed the order. Considering this fact, I do not see merit in the submission of learned counsel for the appellant.

6. In view of the above, I pass following order:

i. The appeal is dismissed. No order as to cost.

ii. Respondent No. 1 /claimant is permitted to withdraw the amount deposited by the appellant-Insurance Company along with accrued interest thereon.

iii. The statutory amount along with accrued interest be transferred to Motor Accident Claims Tribunal, Baramati.

iv. The parties are at liberty to withdraw it as per rule.

7. The appeal is disposed off.

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2023.12.19 14:46:02 +0530

(SHIVKUMAR DIGE, J.)