

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7085 OF 2019

Magma HDI General Insurance Co. Ltd.

.. Petitioner

Versus

Zehsan Irshad Sayyad and Ors.

.. Respondents

-
- Mr. Devendranath S. Joshi, Advocate for Petitioner.
 - Mr. Yogesh Pande, Advocate for Respondent Nos.1 to 3.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 22, 2023.

P.C.:

1. Heard Mr. Joshi, learned Advocate for the Petitioner and Mr. Pande, learned Advocate for Respondent Nos.1 to 3.

2. The present Writ Petition takes exception to the order dated 31.01.2019 passed by the Motor Accident Claims Tribunal, Pune (for short “**Tribunal**”) below Exhibit-49 in MACP No.547 of 2016 rejecting the Application for amendment of the Petitioner - Insurance Company (Original Respondent No.2 therein). By virtue of the amendment Application the Insurance Company has sought a correction with respect to the period and tenure of the policy as mentioned in its written statement dated 01.03.2017.

3. The request made by the Petitioner is contained in prayer clause ‘A’ of its Application which reads thus:-

“A. The opponent no.2 may be permitted to change the date from 8.6.2016 to 7.6.2017 to 8.7.2016 to 7.7.2017 and further be permitted to delete the word insured and substitute it by owner of the vehicle.”

4. At the outset, Mr. Joshi has placed before me the copies of the two insurance policies which are taken on record and marked “X” and “X-1” for identification. First policy shows tenure of the policy from 08.06.2016 to 07.06.2017 whereas the second policy shows tenure from 08.07.2016 to 07.07.2017. He would submit that in view of the correction and substitution of the tenure sought by the Insurance Company and considering the date of the accident, the heirs of the claimants would therefore not be entitled to any relief before the learned Tribunal against the Insurance Company.

5. Mr. Pande, learned Advocate for the contesting claimants has however submitted that it could not be stated and assumed that there was no insurance of the subject vehicle on the date of the accident, considering that it is not the Insurance Company’s case that the vehicle was a new vehicle. He would further submit that allowing the correction and substitution of tenure as sought for by the Insurance Company would virtually oust the claim of the claimants. That apart, he has raised material objection, *inter alia*, stating that considering that the learned Tribunal is now faced with two policies which are almost identical in all respect save and except the tenure as mentioned in the said policies, the onus and burden of proof to prove

the correct policy would lie with the Insurance Company. In that view of the matter, he would submit that grant of prayer clause 'A' simplicitor would be severally prejudicial to the rights of the claimants.

6. I have considered the submissions and perused the record and pleadings of the case.

7. Considering the submissions made by the learned Advocates appearing for the respective parties and to ensure that even if the Application for amendment filed by the Insurance Company is required to be allowed, the right of the claimant cannot ousted unless the correct policy is proven. In that view of the matter, I am inclined to accept the submissions of Mr. Pande.

8. Hence, the following order:-

- (i) The order passed below Exhibit-49 in MACP No.547 of 2016 is quashed and set aside;
- (ii) The Application under Order VI Rule 17 of the Civil Procedure Code, 1908 stands allowed in terms of prayer clause 'A' subject to the caveat that both the tenures of the two policies before the learned Tribunal shall be stated in the written statement of the Insurance Company and the onus of proving the correct tenure shall be on the Insurance Company;

- (iii) All contentions of the parties including any objections, claim of fraud and fabrication, if any, raised by the claimants with respect to the tenure are expressly kept open to be decided by the learned Tribunal strictly after taking evidence in that regards and with respect to both the policies and strictly in accordance with law;
- (iv) Considering the joint request of both learned Advocates and in the interest of justice, proceedings before the Tribunal are directed to be heard and decided finally within a period of six months from today.

9. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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