IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.413 OF 2018

[National Insurance Co. Ltd. **..V/s..** Manohar S/o Sambshiv Dange and Ors.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	*Court's or Judge's order*

Mr A. W. Paunikar, Advocate for Appellant.
Mr V. Awchat, Advocate for Respondent No.1.
Mr S. N. Chichbankar, Advocate for Respondent No.2.
Mr B. P. Bhatt, Advocate for Respondent No.3.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 6th MARCH, 2023.

. Present appeal is preferred by the appellant - National Insurance Co. Ltd. against the judgment and award dated 23.03.2011 passed by the Motor Accident Claims Tribunal Pandharkawada (Kelapur) in M.A.C. No.277 of 2005 (Old No.119 of 2001).

2. By the said judgment and award, the Insurance Company was held liable to pay compensation of Rs.1,17,863/-. The Insurance Company preferred this appeal on the ground that the travel bus bearing No.MH-34/A/8112, which is the offending vehicle in the alleged accident is not insured with the National Insurance Company. The appellant - Insurance Company has also added the New India Assurance Company Limited as respondent No.3 in this appeal. Respondent No.2 - owner had filed an application contending that the vehicle bus is validly insured with the New India Assurance Company Limited, Nagpur *vide* cover note bearing PN/No.764137 dated 07.05.1996 covering the period from 07.05.1996 to 06.05.1997. The cover note is also

placed on record for the perusal of the Court. From the cover note, *prima facie* it reveals that the vehicle bus insured with the New India Assurance Company Limited on the day of accident.

3. This Court by order dated 22.12.2022 noted all these facts. The order of this Court is reproduced as under :

> *"Though it is contended by Mr. Paunikar, learned counsel for the appellant, that the vehicle In question i.e. Travel Bus No. MH-34/A-8112 was not insured with the appellant/Insurance Company i.e the National Insurance Company Limited, but was insured with the New India Assurance Company Limited, which has since been added as respondent No.3, and therefore, the matter would be required to be remanded for determination of the liability of the respondent No. 3 in this regard, by placing reliance upon the insurance cover note placed on record by the respondent No. 2 the owner of the vehicle alongwith Civil Application (CAF) No. 4083/2016, Mr. Bhat, learned counsel for the respondent No.3, seeks time to verify the position regarding the Insurance Policy No.31153001-04627/97, considering which, list the matter on 05.01.2023, on which date, Mr. Bhat, learned counsel for the respondent No.3, shall make a statement regarding the veracity of the Insurance Policy by filing the affidavit in that regard ."*

4. In view of the order dated 22.12.2022, New India Assurance Company Limited was directed to verify the position regarding the insurance policy and make a statement regarding the veracity of the insurance policy by filing the affidavit in that regard. In view of the said order, the Official of the respondent No.3 filed an affidavit stating that the respondent No.2 filed a xerox copy of Insurance Cover Note No.764137 dated

07.05.1996 for a vehicle which is a travel bus MH-34/A-8112 covering risk from 07.05.1996 to 06.05.1997. It is further contended that cover note seems to be issued in the year 1996, which is manually and in-spite of serious efforts, policy of that insurance cover note is not traced, and therefore, in the above factual situation, the respondent is not in position to accept or deny the said cover note.

5. In para No.3, it is further stated that in case, this Court deems fit and proper to remand the case to the Tribunal for determination of liability under the policy of insurance in that circumstances, this respondent would be entitled to raise all the defences which are available to a insurer of an offending vehicle, and in case of determination of liability under the policy of insurance against this respondent, then the interest on compensation amount would be applicable from the date of adding this respondent as party before the concerned Motor Accident Claims Tribunal. The respondent no.2 who added the respondent as insurer of his travel bus after 22 years and therefore for his own fault, this respondent could not be held responsible for interest from the date of original claim writ petition in case of determination of liability by Tribunal against this respondent.

6. Heard Mr Paunikar, learned Advocate for Appellant, Mr Awchat, learned Advocate for Respondent No.1, Mr Chichbankar, learned Advocate for Respondent No.2 and Mr Bhatt, learned Advocate for Respondent No.3.

7. From the submissions and from the record, it is clear that the claim petition was filed against the National Insurance

Company immediate and the Tribunal has held the National Insurance Company liable to pay compensation against the said judgment and award. Present appeal is preferred. during pendency of appeal, owner of the vehicle filed an application alongwith document that offending vehicle on the date of accident was insured with the New India Assurance Company Limited.

8. In the light of the above facts and circumstances and considering that the New India Assurance Company Limited was not a party before the Tribunal. It would be appropriate to give an opportunity to the Insurance Company to adduce the evidence as well as to give the claimant also the necessary opportunity to litigate the claim to get the compensation from the proper parties. Respondent No.3 is at liberty to raise all the defences. The Tribunal shall decide the claim petition by keeping open all the defences and give opportunity to all the parties to adduce the necessary evidence, which is required for the just decision of the case.

9. In view of that the claim petition bearing No.277 of 2005 (Old No.119 of 2001) is remanded back to the Member, Motor Accident Claims Tribunal, Pandharkawada (Kelapur) for adjudication and for disposal. The parties shall appear before the Trial Court on 27.03.2023. The claimant shall take necessary steps to see whether National Insurance Company is necessary party or not. Considering the alleged accident has taken place in the year 1997, the Trial Court shall dispose of the claim petition expeditiously.

10. First Appeal No.413 of 2018 is disposed of as the claim petition remanded back to the Trial Court. The amount deposited by the National Insurance Company be refunded back to the National Insurance Company within three weeks with accrued interest.

JUDGE

TAMBE