IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11849 OF 2022

Krushna Pandit Patil Bagal And Others
VERSUS
Nitin Gulabrao Bagal And Others
...
Mr. Y. B. Bolkar, Advocate for the Petitioners
Mr. S. S. Rathi, Advocate for Respondent Nos.3
...

CORAM : R.M. JOSHI, J
DATE : JUNE 13, 2024

PER COURT :

1. By consent of the parties, heard finally at admission stage.

2. Petitioners are claimants in MACP No. 298/2017 and being aggrieved by order passed below Exh. 39 allowing application for amendment of written statement filed by the Insurance Company, preferred present Petition.

3. Petitioners are the parents of deceased Samadhan who succumbed to the injuries caused in motor vehicular accident occurred on 13.08.2015. Claim petition was filed seeking compensation of Rs. 9 lacs from the Respondents. Respondent NO. 3/Insurer filed written statement at Exh. 10 and has put-forth the

theory of contributory negligence. Thereafter, issues were framed and evidence was led. The learned Tribunal finally heard the arguments of both sides. However, before the judgment could be pronounced, an application vide Exh. 39 came to be moved by the Insurance Company under Order VI, Rule 17 of Code of Civil Procedure (**CPC**) for amendment to the written statement. The said application came to be allowed by learned Tribunal.

4. Learned Counsel for the Petitioners/Claimants vehemently submitted that in view of the mandatory provisions of Order VI, Rule 17 CPC the amendment ought not to have been allowed after the matter was fixed for judgment. According to him, it is obligatory on the part of the Insurer to show due diligence before said application could be allowed by the Tribunal. He placed reliance on following judgments: ***Vidyabai and others vs. Padmalatha and another, (2009) 2 SCC 409***, ***M. Revanna vs. Anjanamma (Dead) by legal representatives and others, (2019) 4 SCC 332***, ***J. Samuel and others vs. Gattu Mahesh and others, (2012) 2 SCC 300*** & ***Revajeetu Builders and Developers vs. Narayanaswamy and sons and others, (2009) 10 SCC 84***. Without prejudice to his

submissions, finally he submitted that if this Court is inclined to maintain impugned order, appropriate cost be imposed against Insurer which according to him in the facts and circumstances of the case cannot be less than Rs. 1 lacs.

5. Learned Counsel for the Respondent No. 3/Insurer has supported the impugned order by drawing attention of the Court to the application wherein it is specifically pleaded that the Insurance Company after investigation came to know certain evidence and hence, according to him, due diligence has been demonstrated before the Tribunal. To support his submissions, reliane is placed on ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Anr, AIR Online 2022 SC 283***. It is his submission that in any case this is not a fit case even to impose cost for allowing amendment.

6. There cannot be any dispute with regard to the proposition sought to be canvassed by the learned Counsel for the Petitioners that after commencement of the trial, it is incumbent upon the parties to show due diligence in order to seek amendment to the pleadings.

In the instant case, application Exh. 39 shows that the Insurer has specifically stated therein about carrying out investigation and revelation of certain material facts therein. Thus, it cannot be said that the Insurer has not pleaded or shown due diligence.

7. The Hon'ble Supreme Court from time to time has cautioned Tribunal to verify the genuineness of the claims as it was noticed that bogus claims are made under Motor Vehicles Act. In this regard, it would be necessary to refer to certain directions issued by the Hon'ble Supreme Court in case of ***Safiq Ahmed vs. ICICI Lombard General Insurance Co. Ltd and Others, Petition for Special Leave to Appeal (C) No. 1110/2017*** as under:

> *The State Governments, represented in this Court, will file up to date status reports with regard to the fake/suspicious claim cases under the Motor Vehicles Act, 1988 and the Employees' Compensation Act, 1923, and the action taken for verification, registration of cases etc.*
>
> *Insurance companies, represented and appearing in the present batch of petitions, will also file a similar status report with complete details viz. fake claim cases. The aforesaid details/status reports would also be furnished to the nominated/standing counsel of the different*

> *States and the State Bar Councils for action.*
>
> *The State Bar Councils of each State will submit status report with details (a) number of complaints relating to fake/suspicious claim cases received during last 5 years, (b) verification and action taken on each complaint, (c) complaints pending before them. The State Bar Council will examine and whenever necessary, take steps/action on the basis of information/details furnished by the insurance companies. Data and particulars in this regard shall be maintained.*
>
> *The State Government(s) will inform the Court whether Special Investigation Teams (SIT) have been constituted in their respective States to investigate the suspicious/fake claim cases.*

It is thus clear from these observations that whenever it is find that the claim is not genuine, the same must be investigated. As such, when along with material documents if it is claimed before Tribunal that the claim is not genuine, such contention cannot be rejected on technicality outrightly.

8. In the instant case, the impugned order indicates that there are several documents filed on record in order to support the contention now sought to be raised by the Insurance Company that the vehicle

shown to have been involved in accident is planted one. If it is so, it would not be in the interest of justice that the Insurer is prevented from taking such pleas and to prove the same. Needless to state that it is always open for the claimant to oppose the said contention of the Insurer on merit and to justify the claim. Thus, no prejudice much less irreparable loss will cause to the claimants if amendment is allowed, as opportunity can be given to claimant even to lead evidence in rebuttal, if so desire.

9. Learned Counsel for the Petitioner also made submission that the Respondents cannot be permitted to withdraw any admission given in written statement. According to him, Hon'ble Supreme Court in the judgment cited on behalf of the Insurer has held so. It trite that a party is permitted to raise contradictory pleas but will have to elect any one of them. As far as present case is concerned, it can be said that when the written statement was filed, the investigation report was not available with the Insurance Company. Now, after investigation report, Insurer wishes to take up stand in consonance of the findings therein. By doing

so, Insurer as given up the earlier plea. In such peculiar circumstances, the amendment as sought deserves to be allowed.

10. This Court, therefore, does not wish to cause any interference in the impugned order, however, having regard to the fact that the claim petition is pending since year 2017, the Tribunal is directed to decide the same within a period of six months from today.

11. Though *bona fides* of the Insurer in amending the written statement even at a belated stage cannot be doubted, however, at the same time, some inconvenience caused to the claimants also cannot be ignored. Hence, this Court finds it appropriate to direct the Respondent No. 3/Insurer to pay cost of Rs. 10,000/- (Rupees Ten Thousand Only) to the Petitioners. Cost be paid on or before next date of hearing before Tribunal.

12. Petition is disposed of in above terms.

(R. M. JOSHI, J.)

Malani