IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 632 OF 2024

WITH

INTERIM APPLICATION NO. 15468 OF 2023

The Commissioner Kolhapur Municipal Transport	…	Appellant
versus		
Padmakar Shivaji Jadhav & Ors.	….	Respondents

Mr. Abhijit Adagule a/w. Mr. Sangram Yadav, Advocate for the Appellant.
Mr. Jayant Bardeskar, Advocate for Respondent No.1.
Mr. Kiran C. Shinde, AGP for the State- Respondent No.2

CORAM : SHIVKUMAR DIGE, J.

DATE : 25th APRIL, 2024.

P.C. :

1. This appeal is preferred by owner of the offending vehicle-Corporation against the judgment and order passed by the Motor Accident Claim Tribunal, Kolhapur (for short "Tribunal").

2. It is contention of learned counsel for Appellant -Corporation that at the time of accident, the offending vehicle was insured with Respondent No.2. During the trial, the copy of insurance policy was not produced before the Tribunal. Hence, Tribunal has observed that there

was breach of terms and conditions of the policy as there was no insurance policy on the date of accident. On that ground, the Tribunal has directed the Appellant to pay the compensation and exonerated the insurance company. Learned counsel further submits that after passing of the judgment and order, the Appellant has found the insurance policy and it was produced before the Tribunal. The tribunal by order below Exhibit '1' dated 5th April, 2022, has observed that the application filed by the Appellant under Section 151 of the Civil Procedure Code does not fit within the ambit of Section 151. On that ground, the Tribunal has rejected the application. Learned counsel further submits that Respondent No.2 is director of the insurance Company has admitted the fact about the insurance policy. Hence requested to allow the appeal.

3. Learned counsel for Respondent No.1-Claimant submits that appropriate order be passed.

4. Learned counsel for Respondent No.2- State submits that the Appellant could not produce the insurance policy before the Tribunal. The order passed by the Tribunal is legal and valid and no interference is required.

5. It have heard all learned counsels perused the judgment and order passed by the Tribunal. The insurance policy produced after passing judgment and order shows that the at the time of accident, the offending vehicle was insured with Respondent No.2. The Respondent

No.2 has accepted the said fact by their letter dated 5th January, 2021. Learned AGP for Respondent No.2 has fairly submitted that at the time of accident, the insurance policy was in existence.

6. In my view, the Appellant could not produce the insurance policy of the offending vehicle because of that the impugned order has been passed by the Tribunal. Later on, the Appellant – Corporation has produced the insurance policy. In fact, it was the duty of Respondent No.2 to state before the Tribunal that offending vehicle was insured with them, but they have not stated in the written statement about the insurance of the offending vehicle before the Tribunal. Considering the above facts, I pass following order.

(a) Appeal is allowed.

(b) The Respondent No.2 shall pay the compensation to the Claimant as fixed by the tribunal along with accrued interest thereon.

(c) The Respondent No.2 shall deposit the compensation as fixed by the Tribunal along with accrued interest thereon within eight weeks after receipt of the Order.

(d) The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

(e) The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

7. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)