IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 2573 OF 2007

Mangala Parashuram Hire)
Age: 40 , Occ: Agriculture)
R/o. Gunjal Nagar, Taluka Deola,)
District Nashik) ....Appellant

Versus

1. Akshata Rajesh Dhanavade,)
   Age: 25 years, Occ: Business)
   R/o. Bhatgaon Taluka Guhagar,)
   District: Ratnagiri) ....Orig. Claimant
2. Sachin Kisan Nivale)
   R/o. Savtas Nagar, CIDCO,)
   Post Nashik.)
3. New India Assurance Co. Ltd.)
   C/o. Branch Manager,)
   R/o. Gurunanak Ghar, 1st Floor,)
   Mumbai Agra Road,)
   Nashik 422 001) ....Orig. Opp. Nos. 2 & 3)

....Respondents

WITH

FIRST APPEAL NO. 2572 OF 2007

Mangala Parshuram Hire,	)	
Age: 40, Occ: Business	)	
R/o. Gunjal Nagar. Tal: Deola	)	
Dist: Nashik	)	....Appellant
		(Orig. Opp. No.1)

Versus

1. Smt. Akshata Rajesh Dhanavade,	)	
Age: 25, Occ: Household,	)	
R/o. Bhatgaon, Tal. Guhagar,	)	
Dist: Ratnagiri,	)	....Orig. Claimants
2. Sachin Kisan Navale,	)	
Age: 29 years, Occ: Business,	)	
R/o. Savtas Nagar, CIDCO,	)	
Post: Nashik.	)	
3. New India Assurance Co. Ltd.	)	
C/o. Branch Manager,	)	
R/o. Gurunanak Ghar, 1st Floor,	)	
Mumbai Agra Rad,	)	
Nashik 422 001.	)	....Respondents
		(Opp. Nos.2 & 3)

Ms. Rukmini Khairnar i/b Mr. Pramod Joshi, Advocate for the Appellant in both Appeal.

Smt. Kalpana Trivedi, Advocate for the Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th APRIL, 2024.

Oral Judgment :

1. The issue involved in this appeal is exoneration of the Insurance Company.

2. It is contention of learned counsel for the Appellant/Owner of the offending vehicle that at the time of accident, the offending vehicle was insured with the Respondent/Insurance Company. The witness of Insurance Company in cross examination has admitted about the issuance of the Insurance Policy but this fact is not considered by the Tribunal. The learned counsel further submitted that in written statement Insurance Company initially admitted about the issuance of Insurance Policy but later on it was denied. Learned counsel further submitted that the evidence produced on record shows that at the time of accident, the offending vehicle was insured with the Respondent/Insurance Company but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent

No.3/Insurance Company that the cover note and Insurance Policy produced before the Tribunal were not marked as exhibit. They were marked as article. The receipt of premium Insurance Policy was not produced by owner of the offending vehicle though, he was appeared before the Tribunal. No bank details showing that premium was paid produced before the Tribunal. The Tribunal has considered all the aspects while passing the judgment and order. Learned counsel further submitted that Appellant has not produced original Insurance Policy, original cover note and receipt of premium of Insurance Policy and bank details before the Tribunal, therefore these are marked as article.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Ratnagiri (for short “the Tribunal”).

5. To prove that offending vehicle was insured with Insurance Company the Appellant has not produced any evidence before the Tribunal. To prove its defense, the Insurance Company has examined their officer Sadashiv Gunjal at Exhibit-71. He has stated that on the day of accident the offending vehicle was not insured with their insurance company. He further stated that vehicles which are sold by

the Sterling Motor, Nashik, they used to insure those vehicles and they had given blank cover note to Sterling Motors and the Sterling Motors would deposit insurance policy and premium to their company but their company has not received premium of insurance policy. He further stated the Article 1 that cover note had signed by their Administrative Officer Shri. Charne, He has identified signature on it. In cross-examination, he has admitted that Article 2 cover note is authorised from their company and the letter head with the said cover note is issued by their company. He further admitted that initially they admitted hat the offending vehicle was insured with their company. He further admitted that when they came to know that the offending vehicle was not insured with their company, they did not inform R.T.O. Office and owner of the offending vehicle. They have taken action against Mr. Chorne for signing on the Article 1 but, he has not produced document related to what action they have taken against him. He further admitted that after paying premium only the insurance policy and cover note is issued. While dealing with the issue of issuance of cover note the Tribunal has observed that no evidence is produced on record by Appellant i.e. owner of the vehicle to prove that premium was paid and the vehicle was insured with the

Respondent No.1/Insurance Company. I am unable to understand the observation of the tribunal, as the defense witness of insurance company in his examination-in-chief has admitted that they had authorized Sterling Motor to issue insurance policy and cover note. Accordingly, Sterling motor had issued cover note and insurance policy to the offending vehicle. The Article 1 is the certificate issued by the Respondent No.1/Insurance Company it states that the offending vehicle is insured with the Respondent No.1/Insurance Company. It is signed by Mr. Chorne the Administrative Officer of the Insurance Company this letter is not denied by the Respondent No.1/Insurance Company.

6. In cross-examination DW-1 admitted that it is authorized cover note issued by their company. The defense witness in cross examination admits that they issue cover note after paying premium of insurance and the DW-1 admits that they did not inform the Appellant or R.T.O. office about not received of the premium amount. From the evidence came on record, it shows that the insurance company had authorized Sterling Motor to issue cover note and insurance policy. It appears that the Sterling Motors had issued cover note to the Appellant as he was authorized by the insurance company.

Hence, Insurance Company is liable to pay the compensation but these facts are not considered by the tribunal.

7. In my view, it is not a case of the insurance policy that the cover note and authorization letter Article A-1 and A-2 are fake. It is the case of insurance company that they had authorized to Sterling Motor to issue the cover note and insurance policy but they did not receive the premium of insurance policy. This Article should have been marked by the Tribunal, when the defense witness admitted that these are authentic documents but it is not exhibited. The Appellant has produced cover note and authorization letter on record so no question of record of premium receipt arises as he had proved that cover note was issued in respect of the offending vehicle and it is admitted by the defense witness in cross-examination.

7. In view of above, I pass following order;

ORDER

i. Appeal is allowed.

ii. The Insurance Company is liable to pay compensation as fixed by the Tribunal along with interest thereon to the Claimant.

iii. The Respondent Insurance/Company shall deposit the amount fixed by the Tribunal along with accrued interest thereon, within eight weeks after receipt of the order.

iv. The Appellant is permitted to withdraw the deposited amount along with accrued interest thereon.

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

(SHIVKUMAR DIGE, J.)