IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 527 OF 2021

The New India Insurance Co. Ltd., Thr, Divisional Officer Add : 3rd Floor, Rushiraj Regency, Vidya Vikas Circle, Gangapur Road, Nashik Also At 41B, 4th Floor, Maker Tower-E, Near World Trade Center, Cuffe Parade, Mumbai-400 005.	}	(Org. Opp. No.2) **...Appellant**

Versus

1. Shri.Digambar Himmatrao Malode Age-26 years, Occ : JCB Operator R/o. At Post, Malodewadi, Taluka-Phubri, District-Aurangabad At present R/o.Wadala Village, Taluka-District-Nashik.	}	
2. Dimple D. Jain Age-Major, Occ : Vehicle Owner R/o. Survey No.106, Jai Harsh Housing Society, Kashi Nagar, Vimal Diary Lane, Bhayander (E), Thane-401105.	}	**...Respondents**

Mr.Rajesh Kanojia i/b Res Juris, for the Appellant.
Mr.Pritesh K. Bohade, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 17th APRIL 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is pay and recover order passed by the Tribunal.

2. It is contention of the learned counsel for the Appellant-Insurance Company that cheque was given as a premium of the Insurance Policy which was dishonoured. The notices were sent to the owner of the offending vehicle and RTO Office. The notices were received by owner of the vehicle and RTO Office. To prove this fact, Officer of the Appellant-Insurance Company was examined but the Tribunal has not considered his evidence. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the witness examined by the Appellant-Insurance Company in cross-examination has admitted that he has not produced acknowledgment receipt about the notices received by owner of the offending vehicle and RTO Office. The Tribunal has considered all the aspects while passing judgment and order. No interference is required in it. Hence requested to dismiss the Appeal.

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

5. To prove its defence, the Appellant-Insurance Company has examined their Officer Alpesh Vasu at Exhibit-44. He has stated that Smt.Dimpal Jain had insured her Indica Car with Appellant-Insurance Company and cheque was issued as a premium of Insurance Policy, but the said cheque was dishonred. Hence, notices were issued to Dimpal Jain about cancellation of the Insurance Policy and intimation was given to RTO Office. In cross-examination this witness admitted that the person whom notice was sent has been reported to have left the premises. The envelop contained the remark unclaimed, returned to the sender. He further admitted that the said seal of "Unclaimed" does not bear any signature. He further admitted that he has not produced the postal acknowledgment of serving notice upon the Regional Transport Office along with the letter dated 2nd June 2014. He further admitted that, he has not issued any letter to the insurer that Policy has been cancelled due to non payment of the

premium. Considering the evidence on record the Tribunal has passed pay and recover order. I do not find infirmity in it.

6. In my view, the Appellant-Insurance Company failed to prove that notice of cancellation of Insurance Policy was issued to the owner and intimation was given to RTO. Hence, I do not see merit in the contention that pay and recover order passed by the Tribunal is erroneous.

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

ORDER

(i) The Appeal is dismissed.

(ii) The Claimant's are permitted to withdraw deposited amount along with accrued interest.

(iii) The Appellant-Insurance Company is at liberty to recover the award amount alongwith accrued interest thereon as fixed by the Tribunal, from the owner of the vehicle.

(iv) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)