IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 254 OF 2024

Reliance General Insurance Co. Ltd. … Appellant
Versus
Pranali Vijay Gaikwad and Anr. ... Respondents

WITH
INTERIM APPLICATION NO. 7782 OF 2024

Pranali Vijay Gaikwad … Applicant
In the matter between
Reliance General Insurance Co. Ltd. … Appellant
Versus
Pranali Vijay Gaikwad and Anr. ... Respondents

………

Mr. Akshay Kulkarni, Advocate for the Appellant in FA/254/2024.
Mr. Nikhil S. Mehta, Advocate for Respondent No.1 in FA/254/2024 and for Applicant in IA/7782/2024.

CORAM : ARUN R. PEDNEKER, J.
DATED : 14th June, 2024.

P.C. :

1. Heard learned counsel for the appellant.

2. The appeal is preferred by the appellant-Insurance Company on the ground that the insurance policy does not cover the period when the accident occurred and the policy was issued for prior period and not covered on the date of accident. However, the Tribunal in its impugned Judgment dated 12.07.2023, in paragraph No. 38 has observed as under :

> "38. It is pertinent to note that insurance company is not denying that policy of said number was not issued for the offending vehicle. The only dispute is in respect of the validity period mentioned in the policy. It is not the case of insurer that the opposite party or the driver of the auto rickshaw has forged said document. As per its letter sent to concerned police station it is their contention that someone has cheated the company as well as customer by forging policy document and committed forged with wrongful intention for wrongful gain and thereby causing wrongful loss by cheating the company and harming its reputation. The recital of the letter itself indicates that someone has cheated the company as well as to the customer. Here on perusal of policy (Ex.20) indicate valid period since 13.2.2017 to 12.2.2018 which covers the date of accident is appearing to be issued by Borivali branch of the Insurer and date of issuance is mentioned as 12.7.2017. It is not the case of insurer that their blank policies have been missing or otherwise. It means policy (Ex.20) has been came to be issued from the Borivali office of Insurance company. It means if any negligence or foul play is there then it is at the office of Insurance company for which the opposite party cannot be blamed."

The Tribunal has held that the policy is issued through the officer of the company and if there is any fraudulent activity or if there is any error thereto, the insurance company cannot run away from the liability that would be fastened from the wrongful act of its employee, if at all. The third party who suffered in the accident *prima facie* cannot be held responsible for the foul play of the office bearers of the Insurance Company.

3. In this view of the matter, the applicants are permitted to withdraw an amount of Rs.4,00,000/- from the amount deposited in this Court along with the accrued interest subject to filing of usual undertaking to the satisfaction of the Presiding Officer, M.A.C.T.

4. Appellant to take steps against the deceased respondent No.2 within a period of four weeks.

5. Interim Application No. 7782 of 2024 is disposed of.

6. Appeal is admitted.

7. Call R & P.

8. On admission Mr.Mehta, learned counsel waives notice for respondent No.1.

(ARUN R. PEDNEKER, J.)

SHUBHADA SHANKAR KADAM Digitally signed by SHUBHADA SHANKAR KADAM Date: 2024.06.20 11:53:26 +0700