IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.8552 OF 2024
IN
FIRST APPEAL NO.964 OF 2023

Smt.Anita Ravindra More & Ors. …. Applicants

V/s.

Future Generali India Insurance Co. Ltd., Mumbai …. Respondent

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NILAM SANTOSH KAMBLE Digitally signed by NILAM SANTOSH KAMBLE Date: 2024.07.25 10:24:42 +0530

Mr.Jitendra P. Gor, for the Applicants.
Mr.Rajesh Kanojia i/b Res Juris, for the Respondent and for the Appellant in FA.

CORAM : ARUN R. PEDNEKER, J.

DATE : 23rd JULY 2024

P.C:-

. The present Appeal is filed by the Insurance Company primarily on the ground that, the Insurance policy produced is a fake one. The learned counsel submits that since, there is no policy at all there can be no pay and recover order and the Insurance Company has to be absolutely discharged from the liability and the Claim, if any, could have been adjusted and maintainable only against the owner of the vehicle.

2. The Tribunal at paragraph Nos.27 and 28 has dealt with the submission of the Insurance Company and has observed as under :-

> *"27. After perusal of the entire evidence on record, it is seen that admittedly an FIR (Exh.43 colly.) was filed against the owner of Motor Car No.MH-04-GD-2655 and Suhas Bh Sawant who was the brother of Suraj Bhikaji was arrested. However, the criminal case is order regarding the same till is filed on record. cannot step into the shoes of the Criminal Court. Perusal of the shows that though some created by the Insurer regarding the Policy but no investigation report or any other documentary evidence like premium receipt register etc. was filed by the Insurer to substantiate its contention. Furthermore, the search reports produced by the Insurer are also not very clear. Even doubt was created at the time of cross-examination as to that the period of policy was from 25.05.2015 to 24.05.2016 and the search report was of 08.09.2022. Whether the system would have shown the policy for the year 2015-2016 in the year 2022, is doubtful. Even the remaining pages of the search report are not filed. Sachin (DW3) was not convincing enough to clear the doubts created by the learned advocate of the Opposite party regarding the search report.*
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> *28. Thus, considering the evidence of witnesses, documentary evidence brought forth, I am of the view that as the Insurance company has been able to create some doubt about the Insurance policy, so it is liable to pay the compensation amount to the applicant and then recover the same from the owner of the vehicle i.e. the Opposite Party. It has not been able to prove its case to the extent to enable the c*

Tribunal to exonerate from its liability."

3. In the instance case, the Claimant's have got the Insurance Policy from the Police Station where the FIR is registered. *Prima facie* there cannot be a contention that the Claimant have fabricated the documents of the Insurance Policy.

4. In view of the same, I permit the Claimant to withdraw 50% amount deposited before the Tribunal along with accrued interest thereon, subject to an undertaking to the satisfaction of the Presiding Officer of the MACP, Court. The Claimant's are permitted to withdraw the amount in the proportion directed by the Tribunal.

5. The Appeal is admitted.

6. On admission Mr.Jitendra Gor, waives notice for Respondents.

7. Call record and proceedings.

(ARUN R. PEDNEKER, J.)