NILAM SANTOSH KAMBLE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.554 OF 2024
WITH
INTERIM APPLICATION NO.6633 OF 2024
WITH
INTERIM APPLICATION NO.6632 OF 2024
IN
FIRST APPEAL NO.554 OF 2024

IFFICO TOKIO General Insurance Co. Ltd., Mumbai …. Appellant

V/s.

Jaya Subhash Pansare & Ors. …. Respondents

WITH
INTERIM APPLICATION NO.9729 OF 2024
IN
FIRST APPEAL NO.554 OF 2024

Jaya Subhash Pansare & Ors. …. Applicants

V/s.

IFFICO TOKIO General Insurance Co. Ltd., Mumbai …. Respondents

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Mr.Sarthak S. Diwan, for the Appellant.
Mr.Vasant N. More, for Respondent Nos.1 to 5.

CORAM : ARUN R. PEDNEKER, J.

DATE : 28th JUNE 2024

P.C:-

<u>INTERIM APPLICATION NO.9729 OF 2024</u>

. The present Appeal is filed by the Insurance Company against the order of the Tribunal only on the ground that the Insurance Policy was cancelled as such the vehicle was not insured. However, the Tribunal has specifically at issue No.2 dealt with this aspect as under.

> *"Issue No.2:-*
> *15. On behalf of insurer, DW-1 Mayuri M. Khare, Legal Senior Executive of Insurer at Exh.40 admitted that insurer has not filed acknowledgment of post authority in respect of the notice of cancellation of policy. The policy was issued in the name of Santosh Kumar Dubey and not in the name of S.K. and Sons. Therefore the policy was not issued in the name of firm. The cheque was issued by S.k. and Sons, hence it creates doubts as to whether the Cheque was issued for the purpose of insurance policy or not. The endorsement note was not having signature and seal of the insurance company. Therefore, there is no record to prove that, the notice dated 23.4.2015 in respect of cancellation of insurance policy was served on the insured and the RTO authority. The accident took place on 25.08.2015 and the notice was not served on insured and RTO Authority.*
>
> *16. The applicant has filed judgment of Hon'ble Supreme Court.*
> *1. National Insurance Co. Ltd V/s. Yallamma and Anr. Reported in 2008 (2) TAC 772 (SC). It is obsrved by Hon'ble Apex Court that if Tribunal found no valid insurance company to make payment with liberty to recover the same from the owner by initiating appropriate proceeding.*
> *2. National Insurance Co. Ltd. V/s. Bacchubhai Chandubhai Vasava and Ors., 2010(2) TAC 74 Gujrat. It is observed by Hon'ble High Court that, as per section 149(1) of Motor Vehicle Act if the Cheque was dishonoured towards premium of policy and if the insurance company has called the policy it is the liability*

> *of the insurance Company to intimate regarding cancellation of policy to insured and RTO. If intimation not received by insured and RTO then cancellation of policy cannot come in effect. Liability of insurer remains continue from date of acceptance of cheque of premium.*
>
> *17. In the present Application the same ratio is applicable."*

There is no proof of the cancellation of the Insurance Policy produced before the Tribunal by the Insurance Company in the instant case.

2. The Tribunal has granted total compensation of Rs.26,72,200/-. The present Applicant's are widow, minor children and parents of the deceased. The share of the minor children be deposited in terms of the direction of the Tribunal and no withdrawal is permitted towards the share of minor as on date.

3. Considering the submission of the Insurance Company the widow and the parents are entitled to withdraw 50% of the amount as directed by the Tribunal along with the accrued interest thereon, subject to undertaking to the satisfaction of the Presiding Officer of the Tribunal. The Application for withdrawal of the amount is disposed of.

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4. The Appeal is admitted.

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5. Delay condoned.

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6. Stay confirmed.

7. The learned counsel appearing for the Insurance Company submits that since the short issue involved in the matter the same can be disposed of at the admission stage.

8. List the Appeal for hearing after six months.

9. Call Record and proceedings.

(ARUN R. PEDNEKER, J.)