IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CIVIL APPLICATION NO.3871/2018 IN FIRST APPEAL NO. 1062/2017 (d)

National Insurance Company Ltd. thr. its Regional Manager .vs. Mrs. Sushila Subhash Mendhe and Others

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. V. P. Maldhure, Advocate for applicant-respondent no.1
Mr. R. M. Pande, Advocate for non applicant – respondent Nos. 1 and 2.
Mr. R. K. Borkar, Advocate for non applicant – respondent No.3.

CORAM : ANIL L. PANSARE, J.
DATE : 04.04.2024

On 14.03.2024, following order was passed:

"The Insurance Company is seeking to recall the judgment and award dated 23/1/2018 passed by this Court in First Appeal No. 1062/2017 on the ground that the Counsel, who argued the matter before this Court, was not aware of the fact that the Insurance Company has also filed an appeal against the impugned award passed by the Motor Accident Claims Tribunal.

2] The learned Counsel for the applicant states that the Counsel, who argued First Appeal No. 1062/2017 on behalf of the Insurance Company, was not the same Counsel, who has filed the appeal on behalf of the Insurance Company.

3] The prayer in the application indicates that the appeal filed by the Insurance Company was not registered. It appears that the Insurance Company had filed an application seeking condonation of delay in filing First Appeal and, therefore, the First Appeal was numbered as First Appeal (Stamp) No. 23011/2017.

4] Prima facie, I am not inclined to recall the judgment. May be the Counsel, who argued the appeal, was not aware of the fact that the Insurance Company has filed an appeal against the same award, the Insurance Company, however, cannot take such stand for recalling the judgment passed by this Court. It was a duty of the Officers of the Insurance Company to make aware all concerned of the developments. Having not

done so, the judgment cannot be recalled for the lapses committed by the Officers of the Insurance Company.
5] At this stage, the learned Counsel for the applicant seeks time to take instructions.
6] Stand over to 4/4/2024."

2. The learned counsel for the Insurance Company submits that in the appeal filed by the insurance company, notices were served upon the respondent Nos.1 and 2, who were appellants in First appeal No.1062/2017. He submits that they ought to have informed the Court of pendency of appeal filed by the Insurance Company. Accordingly, he submits that they are also at fault.

3. Thus, the Insurance Company intends to justify the lapses committed by its officers by pointing out fingers towards other side. The argument appears to be strange inasmuch as the lapses committed by the other side will not neutralize the lapses committed by the officials of the Insurance Company. They failed to intimate to the counsel appearing for the Insurance Company of the pendency of another appeal. So far as the First Appeal No.1062/2017 is concerned, the counsel appearing for both the sides were heard.

4. In the circumstances and as stated in the order dated 14.03.2024, the judgment cannot be recalled for the lapses committed by the officials of the Insurance Company. There is no substance in the application. The application is accordingly rejected.

Civil Application No.2226/2023

By the present application, the appellants – original claimants are seeking to withdraw the amount of compensation deposited by the respondent – Insurance Company. The appeal has been decided vide judgment and award dated 23.01.2018. The application seeking recall of the judgment has been rejected.

2. In the circumstances, there appears no reason why should the request made by the appellants be not allowed.

3. Accordingly, the application is allowed. Appellant Nos.1 and 2 are permitted to withdraw the amount lying with the Registry. The amount shall be disbursed in accordance with the award passed by this Court.

(Anil L. Pansare, J.)

Kahale