2025:BHC-AUG:22997

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 9023 OF 2025
IN
FIRST APPEAL NO. 2197 OF 2024

Hirabai W/o Arvind Gaikwad and others .. Applicants

Versus

The New India Assurance Co. Ltd.
and another .. Respondents

Shri Shivaji M. Nawale, Advocate for the Applicants.
Shri M. R. Deshmukh, Advocate for the Respondent No. 1.

CORAM : SHAILESH P. BRAHME, J.
DATE : 21ST AUGUST, 2025.

FINAL ORDER :

. Heard both sides.

2. Present application is for withdrawal of amount of Rs. 33,48,339/- besides statutory deposit of Rs. 25,000/- deposited by the respondent No. 1 – Insurance company.

3. Accident took place on 10.03.2017. On the basis of cover note produced on record at Exhibit 85 and carbon copy was at Exhibit 86, it is contended that accident in question was covered by the contract of insurance policy. It is submitted that the insurance company did not examine a person namely Mr. K. N. Kale, who is alleged to be an agent. It is submitted that

elaborate finding has been recorded by the Tribunal relying upon insurance cover note, which cannot be faulted.

4. Per contra, learned counsel Mr. Mohit Deshmukh for the respondent No. 1 – insurance company vehemently opposes the application. He would submit that insurance cover was from 17.03.2017 to 16.03.2017. He would advert my attention to the cross examination of the owner of the vehicle. It is submitted that the cover note placed on record at Exhibit 85 and carbon copy at Exhibit 86 did not confirm to the insurance policy. The Tribunal was misled because of those documents and arrived at perverse finding. It is submitted that in all probabilities the owner of the vehicle maneuvered the cover note so as to cover the accident in question. It is further submitted that all the relevant record was produced before the Tribunal by the insurance company. It is a case of fraud and insurance company will suffer loss if the amount is disbursed.

5. I have considered rival submissions of the parties. Impugned judgment refers to cover not Exh. 85 and carbon copy at Exh. 86. The cover notes are not conclusive documents of contract of policy. It is imperative for the Tribunal to examine the contract of policy, which would always prevail over cover notes. The cover note was before the Tribunal, but it was overlooked, which was showing period of cover as 17.03.2017 to 16.03.2018.

6. It is not necessary at this stage of the proceeding to find out as to who is at fault in issuing cover notes at Exhibit 85 and 86 and who has maneuvered the said documents. The fact remains that accident occurred prior to issuance of the policy, in other words prior to the execution of the contract. I am fortified in my view by the judgment referred of the Supreme Court in the matter of ***National Insurance Co. Ltd. Vs. Sobina Iakai (Smt) and others*** reported in ***(2007) 7 SCC 786***. Considering the ratio laid down in para No. 19, I am of the considered view that the Tribunal has committed patent illegality in holding that accident was covered by the insurance policy.

7. Learned counsel Mr. Deshmukh has rightly adverted my attention to the cross examination of the owner of the vehicle. He is unable to disclose as to when and how the premium was paid. His cross examination creates doubt apparently. The respondent No. 1 – insurance company has been saddled with the joint and several liability of payment of compensation. In this situation, I am not inclined to permit the applicants to receive the amount. The civil application is rejected.

[SHAILESH P. BRAHME J.]

bsb/Aug. 25