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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.28 OF 2026
IN
FIRST APPEAL NO.1636 OF 2025

Biharilal S. Jaiswar ...Applicant
V/s.
Shrikant T. Payar & Anr. ...Opposite Party

IN THE MATTER BETWEEN :

HDFC ERGO General Insurance Co. Ltd. ...Appellant
V/s.
Biharilal S. Jaiswar & Anr. ...Respondents

WITH
INTERIM APPLICATION NO.10971 OF 2025
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HDFC ERGO General Insurance Co. Ltd. …Applicant / ...Appellant
V/s.
Biharilal S. Jaiswar & Anr. ...Respondents

Mr.Deepak S. Kilaje for the Appellant.

Mr.Sarthak Diwan for the Respondents and for the Applicant in IA No.10971 of 2025.

CORAM : R.M. JOSHI, J.
DATE : 22ND JANUARY, 2026.

P.C. :-

1. By consent of both the sides, heard finally at the stage of admission.

2. This Appeal is filed by the Insurer takes exception to the impugned judgment and award dated 5th May, 2025 passed in MACP No.1255 of 2019 granting compensation of sum of Rs.3,51,505/- with interest at the rate of Rs.7% p.a. The Appellant Insurer has filed this Appeal on the ground that the Tribunal has committed an error in not considering the defence of the Insurer with regard to fake policy and evidence led in support thereof. Secondly, the issue of negligence on the part of Claimant in the occurrence of the accident, so also the excessive income of the injured accepted by the Tribunal are made grounds for challenge to the same.

3. Learned counsel for the Appellant submits that in the

written statement, a specific plea has been raised about the offending vehicle being not covered for any risk with the Insurer. It is alleged that the policy produced by the Claimant is fake / forged and fabricated policy. He further drew the attention of the Court to the evidence led before the Tribunal by examining Mr.Sagar Ashok Gangurde, Manager (Claims) of the Appellant Insurer. It is his submission that this witness has categorically stated about non-issuance of the policy and the policy in question being fake in question. According to him, not only such plea has been raised but the same is supported by the evidence in the form of the extract of Premium Register. It is his submission that the Tribunal erred in not accepting the said evidence of the witness on the ground that he has no personal knowledge of the factum of issuance of policy and the extract of Premium Register. It is his submission that since these documents are maintained in ordinary course of business of the Insurance Company, it would be open for the Insurer to lead evidence on the basis of the documents and that personal knowledge of the witness would become irrelevant.

4. On the point of negligence, it is his submission that the

Tribunal ought to have held the Claimant's negligence on the occurrence of accident in view of the police papers on record. Similarly, he raises challenge to the notional income accepted of the Claimant at the rate of Rs.15,000/- per month.

5. Learned counsel for the Claimant supported the impugned judgment and award.

6. There is no dispute about the fact with regard to occurrence of accident in question and involvement of the offending vehicle therein. The dispute is as to whether the Insurer is liable to pay the compensation for the reason that the Insurer claimed the insured being not issued with the policy in respect of the offending vehicle.

7. The Insurer has taken a specific plea in the written statement with regard to the policy relied upon by the Claimant is forged / fake policy. In the evidence however the witness of the Insurer apart from claiming the same went on to lead evidence with regard to the difference in the category of the vehicle in respect of which policy is issued. Admittedly, no specific plea in this regard has been raised in the written statement. This Court

finds some substance in the contention of the learned counsel for the Appellant that in respect of the record maintained by the Insurance Company, in its ordinary course of business, it would be open for the employee who is authorized to depose to lead evidence on the basis of the documents without any personal knowledge in respect of the same. Even if it is accepted so, the question is as to whether the Insurer was able to prove its contentions with regard to the fake policy. Perusal of the cross-examination of this witness shows that there was no notice given to the R.T.O. with regard to the said claim of the Insurer about the fake policy. Similarly, notice was issued to the owner in the year 2025 i.e. at the fag end of the trial before the Tribunal. Apart from this, if it is the case of the Insurer that the insurance policy placed on record is fabricated, it was open for the Insurer either to lead evidence showing the policy issued under the same number in respect of another vehicle or to claim that the policy issued in the number as claimed by the Claimant could not have been issued owing to the fact that those number of policies were never sold to its customers. Such evidence was available with the

Insurer but the same has not been placed before the Tribunal. The Tribunal has rightly considered the evidence on record led by the Insurer and detail findings are recorded in paragraphs 13 to 15 of the impugned judgment and award. On the basis of evidence on record, no perversity is found in the said findings.

8. Insofar as the alleged negligence of the Claimant in the occurrence of the accident, since there is no evidence on record to indicate so, it cannot be held so. The Tribunal has accepted the income of the injured at the rate of Rs.15,000/- per month. Considering the fact that the injured is the driver, the income accepted by the Tribunal is not excessive to cause any interference therein. In view of the above, no merit in the Appeal and the same is dismissed.

9. All pending Applications stand disposed of. The statutory deposit, if any, made by the Appellant be transferred to the Tribunal. The said amount, if any, be adjusted towards the compensation.

10. R & P be sent back to the Tribunal.

(R.M. JOSHI, J.)