

ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL APPLICATION NO.5744 OF 2008  
IN  
FIRST APPEAL ST.NO.27111 OF 2008

Oriental Insurance Co.Ltd. ...Applicant

vs.

Meerabai Mudgul & Ors. ...Respondents

Mr.S.A.KUmbhakoni for respondent nos.1 to 4

CORAM :A.S.OKA,J.

DATE : AUGUST 31, 2010

P.C.

1 The applicant who is the insurer of the vehicle has filed his application for condonation of delay in challenging the award made in favour of the 1<sup>st</sup> to 4<sup>th</sup> respondents in a claim petition under section 166 of the Motor Vehicles Act,1988. The only challenge in the appeal is on the ground that the 6<sup>th</sup> respondent who was the driver of the vehicle was not possessing a valid licence. Notwithstanding the said defence, an award has been made against the applicant. Office noting made on 8<sup>th</sup> October 2009 shows that the 5<sup>th</sup> respondent is dead. On 26<sup>th</sup> March 2010 this Court granted four weeks time to the applicant to take steps for bringing the legal representatives of the deceased respondent no.5 on record. On 23<sup>rd</sup> April 2010 time was again granted to the applicant till 18<sup>th</sup> June 2010. Till today, no application has been made for setting aside the abatement.

2 Looking to the challenge in the appeal, the 5<sup>th</sup> respondent being the insured is necessary and proper party to the appeal. As a result of the abatement of this application as against the respondent no.5, the

impugned award has become final as far as respondent no.5 is concerned and even if the appeal is allowed, there will be inconsistent award which is not permissible in law. Therefore, even if delay is condoned by allowing this application, the appeal will not survive.

3 In view of abatement of the application as against the respondent no.5, this application does not survive and the same is disposed of. Accordingly the application for stay bearing no.5745 of 2008 does not survive and the same is disposed of.

4 Civil Application no.2353 of 2009 does not survive and the same is disposed of.

JUDGE