<u>Order below Exh. 78 in M.A.C.P. No. 330/2016</u>
<u>(CNR-MHST010023012016)</u>
(Chand Abdul Shaikh and another Vs. Ashok Anatrao Nevase and another)

1. By this application, learned advocate for the claimants has prayed to recall the order of exhibiting documents appended with application of Exh. 40 which are enlisted at Exh. 41 and Exh. 55 respectively so also to de-exhibit the same by submitting that opponent no. 2 insurance company has filed copies of two insurance policies with Exh. 41 and five documents are submitted with Exh. 55. The applicant has strongly objected the application of Exh. 40 by filing another application at Exh. 47. Said application of Exh. 47 was decided on merit on 16/02/2022 by which the predecessor of this Court has held that two insurance policies filed on record with Exh. 40 and 41 by opponent 2, are inadmissible in evidence and are not accepted. Despite said order, concealing said fact, opponent no. 2 filed another application at Exh. 67 with prayer to exhibit the documents filed with Exh. 40. On 07/01/2025, said application has been allowed by the another predecessor of this Court due to misleading by opponent no. 2 and without inviting the attention of the Court to the order passed by the Exh. 47. Giving exhibit numbers to documents appended with Exh. 41 and 55 is illegal, hence the claimants have prayed to de-exhibit said documents. Hence this application.

2. Opponent no. 2 has strongly objected this application on the ground that these documents are exhibited as per the provisions of the Indian Evidence Act and documents appended with Exh. 55 are proved by the witness. With this opponent no. 2 has prayed to reject this application.

3. Heard both the sides.

4. Perused record. Before proceeding further, it needs to mention that this claim petition has been filed under Section 166 of the Motor Vehicles Act. In view of catena of judgments of the Hon'ble Supreme Court as well as Bombay High Court, Section 169 of the Motor Vehicle Act allows tribunal to accept the documentary evidence especially when those are not disputed. Tribunal priorities substantial justice over the procedure technicalities. In the case in hand since inception that is by filing say of Exh. 23, opponent no. 2 has denied that vehicle no. MH-11-F-1768 was not insured with this opponent at the time of accident. The validity period of previous insurance policy no. 151704311302000612 of said vehicle was from 18/05/2013 to 17/05/2014. The accident has taken place on 09/01/2016. To support said contention, copy of insurance policy of vehicle MH-11-F-1768 which was from the period starting on 18/05/2013 to 17/05/2014, is produced on record which is endorsed as true copy by the branch manager of opponent no. 2. Similar policy no. 151704311302000612 was drawn from 16/06/2015 to 15/06/2016 for vehicle no. MH-11-BR-9441. Said copy is also endorsed as true copy by the branch manager of opponent no. 2. Thus, these two documents though being true copy are relied upon by opponent no. 2 in support of their defence.

5. It is further contention of learned advocate for the claimants that requisite certificate under Section 65-B of the Indian Evidence Act is not appended thereto and therefore those cannot be admitted in evidence, is absolutely lack of substance. As the Tribunal is not bound by the strict and technical rules of the Indian Evidence Act, this submissions made by the claimants hold no water. It cannot be lost of sight that the Motor Vehicles Act is the beneficial legislation and at the same time placing the responsibility on the shoulder of insurance company to pay the compensation, it needs to consider whether there was valid insurance

policy in existence at the time involvement of vehicle in accident. Opponent no. 2 has submitted the computerized copy of policies available with it as aforesaid with endorsement of true copy and there is no reason to disbelieve the same.

6. More so, the documents appended with Exh. 55 are the copies of notice issued by opponent no. 2 to opponent no. 1 and reply sent by opponent no. 1 to opponent no. 2. The copy of duplicate insurance policy dated 18/05/2013 to 17/05/2014 is filed at Exh. 74 along with endorsement as duplicate by the branch manager of opponent no. 2. The requisite certificate under Section 65-B of the Indian Evidence Act was later on filed at Exh. 75 and duplicate insurance policy of vehicle MH-11-BR-9441 is filed at Exh. 76. This is how the record demonstrates.

7. De-exhibiting the document is not an order which can be passed in routine manner. It is an exceptional order as it affects the Court record. To de-exhibit any document, the claimants has to prove that said document was wrongly exhibited. Merely because the requisite certificate under Section 65-B of the Indian Evidence Act was not filed initially and the another certificate which is filed later on to comply said lacuna is not strictly in the technical words as provided in the Section, such technical ground cannot be sufficient to de-exhibit the documents filed at Exh. 41 and Exh. 55 in this claim petition. Accordingly, I do not find merit in the application. Considering the scope and nature of this litigation, it is for the claimants to prove that there was valid insurance contract existing between owner of vehicle no. MH-11-F-1768 and opponent no. 2 on the date of accident and in view of said contract, the claim of claimants seeking compensation from opponent no. 2 is valid. Merely by making this application to de-exhibit the document, the claimants cannot get rid of the defence of opponent no. 2. Hence filling of this application has become

devoid of merits. With these observations to conclude, I proceed to pass the following order.

ORDER

Application stands rejected.

Date : 12/09/2025

(J. S. Bhatia)
Member,
M.A.C.T., Satara