

(2014) 03 DEL CK 0154

Delhi High Court

Case No: MAC. APP. No. 995 of 2011 and C.M. No. 20464 of 2011

New India Assurance Company
Ltd.

APPELLANT

Vs

Kishan Singh Chauhan

RESPONDENT

Date of Decision: March 21, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 8
- Constitution of India, 1950 - Article 142

Citation: (2014) 2 ACC 316

Hon'ble Judges: Suresh Kait, J

Bench: Single Bench

Advocate: K.K. Bhat, Advocate for the Appellant; Deepa Rai, Advocate for the Respondent
Nos. 5 to 7, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Suresh Kait, J.

MAC APP No. 995/2011

1. The instant appeal is directed against the impugned award dated 30.8.2011, whereby the learned Tribunal has granted compensation for a sum of Rs. 6,64,296 with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization of the amount. Admittedly, recovery rights have been granted in favour of the appellant and against the respondent Nos. 5 and 6, i.e., driver and owner of the offending vehicle.

2. The case of the appellant herein is that the cover note of the offending vehicle in question was forged one, thus, the offending vehicle was not insured with the appellant. In such an eventuality, the learned Tribunal ought to have exonerated the appellant from liability of paying the compensation.

3. Learned Counsel appearing on behalf of the appellant submitted that the cover note Ex. R4W1/4 was in the name of Shri Dinabandhu Sharma, issued for the period from 29.6.2001 to 28.6.2002 for Yamaha RX 100, bearing No. DL1S 7681 and the cover note in question bearing No. 019135 dated 19.6.2010, Ex. R4W1/1, issued through Agent Ms. Reena Kumari for the insurance of RTV Bus bearing No. DL1VA 2894(offending vehicle) was forged one but the learned Tribunal has relied upon the same.

4. On examination of Mr. Vijay Prakash Bara, Senior Assistant of the appellant company, who filed his affidavit Ex. R4W1/A, stated that the cover note bearing No. 19135 dated 19.6.2010, allegedly pertaining to vehicle bearing No. DL1V A 2894, in the name of Smt. Chanderwati for the period from 9.9.2010 to 18.6.2011, was not issued by the appellant and the same was forged. The same was proved as EX. R4W1/1.

5. Learned Counsel further submitted that when the appellant company was informed by their Agent on 29.7.2001, a complaint was made to the Station House Officer, Police Station Green Park, New Delhi, on the same date, which was Tx.R4W1/3. However, the police did not register the F.I.R.

6. He further submitted that in the amended written statement of the appellant, a preliminary objection was taken that appellant was not liable to pay any amount of compensation as the offending vehicle bearing No. DL IV A 2894 was not insured with the appellant and that the cover note No. 19135 appeared to be forged as it was not reflected in the records of the appellant.

7. In para 17 of the amended written statement, it was stated that the offending vehicle was not insured with the appellant, thus, the appellant was not liable to pay any compensation whatsoever. The same averment was made while replying to the aspect of liability.

8. Learned Counsel also submitted that similar situation came before this Court in a case of [Sultan Singh Jain thr. LRs. Vs. Kanti and Others,](#) wherein this Court has held as under:

3. Counsel for the Insurance Company-respondent No. 5 on the other hand contends that the witness RW-1 has categorically stated that there is no policy with the Insurance Company bearing No. 4512172459. He submits that such numbers were not in existence at the time when the so-called alleged policy is stated to have been issued

4. Heard Counsel for the parties and have gone through the statement of RW-1.I find no substance in the submission made by Counsel for the appellants that there was a subsisting insurance policy which would make the Insurance Company liable to pay the claim. On the basis of the evidence on record, it cannot be said that the appellants have been able to prove that vehicle in question was insured with the

Insurance Company at the time of the accident. In that view of the matter. I find no infirmity in the Award under challenge. FAO 89/1990 is accordingly dismissed.

9. Also relied upon the case of [National Insurance Co. Ltd. Vs. Parvathneni and Another,](#) wherein the Apex Court has held as under:

4. No doubt, there are some decisions which have taken the view that even if the Insurance Company has no liability, yet it must pay and later on recover it from the owner of the vehicle. See for example [National Insurance Co. Ltd. Vs. Yellamma and Another,](#) ; [Samundra Devi and Others Vs. Narendra Kaur and Others,](#) ; [Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others,](#) ; [The New Indian Insurance Company Vs. Darshana Devi and Others,](#) .]. We have some reservations about the correctness of the aforesaid decisions of this Court.

5. If the Insurance Company has no liability to pay at all, then, in our opinion, it cannot be compelled by order of the Court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner of the vehicle. In our view, Article 142 of the Constitution of India does not cover such type of cases.

10. Since none appeared on behalf of the respondent Nos. 5 to 7 despite service, therefore, vide order dated 7.5.2013, this Court appointed Ms. Deepa Rai. Advocate as an Amicus Curiae to defend the aforesaid respondents.

11. On the other hand, learned Amicus Curiae for respondent Nos. 5 to 7 to 7 submitted that though the complaint dated 29.7.2011 was addressed to the SHO, P.S. Green Park, New Delhi, but there is no proof that the said complaint was given/made to the said Police Station. The said complaint was received in the office of Deputy Commissioner of Police (South East), which proved that a formal attempt was made but the complainant was not serious. Thus, the learned Tribunal has recorded in its impugned order that in respect of the insurance cover note, simply one letter was written to SHO, which was not pursued thereafter and no proceedings or enquiry shown to have been initiated. Thus, FIR was not registered pursuant to the complaint noted above. It only bears the stamp of the Office of DCP, South-Bast, without certifying as to which official had received the complaint. Hence, the factum of lodging the complaint with the police was not proved as no witness has been summoned by the appellant company to prove this fact.

12. I have heard the learned Counsel for the parties and have perused the record.

13. On perusal of the material placed on record, it is revealed that the appellant/Insurance Company raised the defence before the learned Tribunal that the offending vehicle was being plied without the driving licence, permit and fitness and the insurance cover note was forged.

14. It is also revealed from the records that the appellant had not served the respondent Nos. 5 and 6, i.e., driver and owner of the offending vehicle with any

notice under Order XXII Rule 8, CPC calling upon them to furnish the driving licence, permit and fitness certificate of the offending vehicle. Thus, the defence raised by the appellant does not establish.

15. Admittedly, recovery rights have already been granted in favour of the appellant.

16. In view of the above discussion, I do not find any merit in the instant appeal. The same is dismissed accordingly. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant and the remaining compensation amount in favour of the respondents/claimant proportionally in terms of the award.

C.M. No. 20464/2011

With the dismissal of the appeal itself, this application has become infructuous. The same is accordingly dismissed.