(1988) 07 MP CK 0009

Madhya Pradesh High Court

Case No: None

United India Insurance Co. Ltd. — APPELLANT

Vs

R.M. Shukla and Another — RESPONDENT

Date of Decision: July 11, 1988

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110A, 110D

Citation: (1988) 2 ACC 491 : (1988) ACJ 1052

Hon'ble Judges: G.C. Gupta, J

Bench: Single Bench

Judgement

G.C. Gupta, J.

This is an appeal u/s 110 D of the Motor Vehicles Act by the Insurance Company against the award, dated 5-12-1986, passed by Motor Accident Claims Tribunal, Sabalpur in Claim Case No.12 of 84, making the appellant responsible for payment of Rs. 31,075/- as compensation to respondent No. 1.

2. The respondent No. 1 filed his claim u/s 110-A of the Act against the appellant and respondent No. 2 complaining that he suffer-red permanent injury and disablement on account of accident on 6-8-1983 by the truck No. MRJ 5044 owned and driven by respondent No. 2. The said truck is admittedly insured with the appellant. It however appears that the respondent No. 2 submitted the proposal for obtaining insurance at 6-05 p.m. on 6-8-1983 itself without disclosing this accident which admittedly had taken place at about 10-30 a.m. and was within his knowledge. Though para 8 of this proposal required the non-applicant No. 2 to give details of accidents during last 2 years, this accident was not disclosed. At about the same time on 6-8-1983 the cover note was issued to non-applicant No. 2. Later on, on 8-8-1983 certificate of Insurance, Ex. N.A. 3 was also issued. This certificate does not mention the time from which the policy became effective but mentions 6-8-1983 as the effective date of commencement of insurance. Acceptance invoice Ex. N.A. 4 also covers the risk from 6-8-1983 to 5-8-1983. The case of the respondent No. 2 was that he bad paid

money for obtaining insurance policy at about 9 a.m. on 6-8-1983 and had received the insurance papers subsequently which were Exs. N.A. 3 and N.A. 4. During cross-examination he denied his signatures on proposal form Ex. N.A. 1. He also denied the date and time of that document. According to him, the form which he had signed was filled by Mr. Sabarwal, the Development Officer. Mr. Sabarwal was examined as a witness for the appellant and proved that the date and time as appearing in this document was written by him and was correctly written. Learned Claims Tribunal believed the evidence of Shri Sabarwal and held that the policy was taken in the afternoon after the accident had taken place. However, referring to Ex. N.A. 3, the certificate of Insurance, the Tribunal held that the risk for the entire date, that is, 6-8-1983 was covered and therefore the appellant was liable to pay the compensation. The Tribunal also relied on a Division Bench decision of Madras High Court in Jaikrishan Das v. Chimthal Ammal 1984 AC J 530 for this purpose. That is how the matter is before this Court for its consideration.

3. Submission of the learned Counsel for the appellant is that even though it is possible to hold the Insurance Company liable for the accident because of Ex. N.A. 3 which does not limit the liability to any particular time, the contract of Insurance itself must be held to be void for non-disclosure of the accident which was within the knowledge of respondent No. 2. The submission in other words, is that the respondent No. 2 who was involved in the accident was aware of the same and bad obtained the insurance cover only to meet the aforesaid liability without disclosing the said accident. It is, therefore submitted that the Insurance policy was obtained by fraud and misrepresentation and must therefore be held to be void. The submission of the learned Counsel for the respondent No. 2, however, is that no such case was pleaded before the Tribunal and hence the appellants are not entitled to canvass a new case for the first time in this appeal.

4. The decision of the Madras High Court in Jaikrishna Das''s case (supra) is indeed the complete answer to the case pleaded by the appellants before the Tribunal. In the aforesaid case also the policy was taken after the accident without disclosing the accident in question. Like the present case the proposal and cover note mentioned time also The certificate of Insurance or Insurance policy however, did not contain any such timing. The Madras High Court was of the view that the accident was covered. A reading of that judgment shows that similar view has been taken by that very Court earlier and also by the Bombay High Court Learned Counsel for the appellant did not challenge the correctness of this view and hence this Court does consider it necessary to examine the matter from that angle. The view otherwise appears to be reasonable and hence the Claims Tribunal made no mistake in following the same.

5. The question for consideration, however, is whether the contract between the respondent No. 2 and the appellant can be said to be void ? Reliance has been placed by the learned Counsel on Mithoolal Nayak Vs. Life Insurance Corporation of

India, . This case is the authority for the proposition that if a policy holder is guilty of fraudulent suppression of material fact when he has made his statements, which must have been known the policy issued to him relying on those statements would be vitiated. Assuming that this provision would apply it will have to be examined whether the respondent No 2 wrote column 8 of Ex. N.A. 1 with a view to suppress facts. It will further have to be examined whether suppression was fraudulent, there is unfortunately no such plea in the written statement of the appellant. The proposal for Ex. N.A. 1 has not been written by him. Shri Sabarwal, the only witness examined by the appellant admitted that he had filled that form. There is nothing in his statement from which it could be inferred that this witness asked the respondent No. 2 to disclose all accidents during last 3 years and thereafter filled the col. on information given by him. The fact that the respondent No. 2 is a semi-literate person is also considered relevant. In the context of the facts it will not be possible for this Court to record any findings about the aforesaid essential ingredients. Then it was the obligation of the appellant to take such a plea specifically and given opportunity to all parties to meet their case. There is no explanation why they did not take such a plea. Taking an over all view of the matter this Court does not consider it proper to deal with the plea further and remains satisfied by holding that neither the case of fraudulent misrepresentation was pleaded before the Claims Tribunal nor it is possible for this Court to record any positive finding about it in view of the facts and circumstances noticed above.

6. In view of the discussion aforesaid, the appeal fails and is dismissed but without any order as to costs.