

(1986) 08 CAL CK 0023

Calcutta High Court

Case No: A.F.O.O. No. 532 of 1978

New India Assurance Co. Ltd.

APPELLANT

Vs

Arabinda Mukherjee and Others

RESPONDENT

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**Date of Decision:** Aug. 1, 1986**Citation:** (1987) ACJ 544**Hon'ble Judges:** M. Mallick, J; G.N. Ray, J**Bench:** Division Bench**Advocate:** Biswajit Chowdhury, for the Appellant; Samindra Kumar Das, for the Respondent**Final Decision:** Allowed

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### Judgement

G.N. Ray, J.

This appeal is directed against an award passed against the New India Assurance Company Limited for a sum of Rs. 50,000/- on account of an accident caused by a lorry bearing No. WBL 7819. It is the case of the claimant-Petitioner who is the Respondent No. 1 in the instant appeal that the said vehicle was insured with M/s Anand Insurance Company Limited which became one of the constituents of the New India Assurance Company Limited under the General Insurance Business (Nationalisation) Act, 1972. It appears that the objector-Appellant in the written objection has specifically contended that the vehicle in question was not insured with M/s. Anand Insurance Company Limited and the said insurance company had also called upon the owner of the said vehicle to produce the papers to show that the vehicle in question had been insured with M/s. Anand Insurance Company Limited at the time of the accident. The Appellant-objector also contended that the said objector could not be impleaded in the said proceeding and should not be saddled with any liability on account of the accident in question. It appears that the employees from the Motor Vehicle Department had come to depose in the said proceeding but they could not tell from the records that the vehicle in question was insured with M/s. Anand Insurance Company Limited at the relevant time. The

learned Judge awarded a compensation of Rs. 55,000/- and passed the award against New India Assurance Company Limited to the extent of Rs. 50,000/- on the footing that since the insurance company could not establish with reference to their books of the year 1972 that the vehicle in question had not been insured with the insurance company, it should be held that the vehicle in question was insured with M/s. Anand Insurance Company, the constituent of the objector insurance company.

2. Mr. Chowdhury, learned Counsel for the Appellant, has strongly contended before us that it was the duty of the claimant to establish that the vehicle in question was insured with Anand Insurance Company at the relevant time and if the said vehicle was insured with Anand Insurance Company at the relevant time and if the said fact was established by the claimant, the New India Assurance Company Limited certainly could have been saddled with the liability to the extent of the sum assured by the policy or to the extent of the maximum statutory liability. He has contended that in the instant case there is no material on the basis of which the Tribunal could proceed against M/s. Anand Insurance Company Limited or the objector insurance company as the insurer. The award, it appears, was passed against the New India Assurance Company Limited on surmise that the company was the insurer of the vehicle. Mr. Chowdhury has contended that the burden to prove the liability of the insurance company was on the Applicant but the Applicant failed to discharge the said burden. There is no prima facie evidence given by the claimant on the basis of which it can be reasonably held that the primary onus to prove the liability of the insurance company having been discharged by the claimant, the insurance company was under an obligation to dispel the onus of the insurance company to prove that it was not the insurer with reference to its records. In our view, the said contention is justified and we accept the same.

3. It may be noted that the learned Counsel appearing for the claimant-Respondent could not satisfy us that proper steps had been taken by the claimant-Petitioner to call for the records of the insurance company and in spite of calling for the records for production, the insurance company had failed to produce the records and on that account an adverse inference could be legally drawn against the insurance company.

4. In the circumstances aforesaid, we allow this appeal and set aside the award passed against the Appellant-insurance company for the sum of Rs. 50,000/-.

5. The award is, however, modified to this extent that the Respondent No. 2, Tribhuban Nath Tewari should suffer the award to the extent of Rs. 55,000/-.

6. There will be no order as to costs.

7. The sum since been deposited by the insurance company in terms of the interim order passed by this Court may be withdrawn by the New India Assurance Company Limited.

8. Drawing of formal decree is dispensed with.

Monoranjana Mallick, J.

9. I agree.