

* HIGH COURT OF DELHI : NEW DELHI

MAC App. No.167/2004

% Judgment reserved on: 20th November, 2009

Judgment delivered on: 24th November, 2009

The New India Assurance Co. Ltd.
3388, Green House,
D.B. Gupta Road,
Karol Bagh
New Delhi.
Through its Manager (Legal)
New India Assurance Co. Ltd.
DRO-I, Level 5, Tower II,
Jeevan Bharati,
124, Connaught Circus,
New Delhi-110001

....Appellant.

Through: Mr. Madhurendra Kumar for Mr.
Joy Basu, Adv.

Versus

1. Smt. Vijay Kumari Thakur
W/o. Late Shri Shyam Sunder Thakur
2. Dr. Mridula Gami
W/o. Dr. Upender Gami
3. Chitra
D/o. Late Shri Shyam Sunder Thakur
4. Deepa Thakur
D/o. Late Shri Shyam Sunder Thakur
5. Alok Thakur
S/o.Late Shri Shyam Sunder Thakur
(Minor through his mother & next
friend Smt. Vijay K. Thakur)

(All R/o. F-9/5, Andrews Ganj,
New Delhi).

6. Shri Ranjit Singh
S/o. Shri Uma Shankar
New Birla Line, Kamla Nagar,
Delhi.

7. Lt. Col. Swaran Singh @ Rajinder
S/o. Shri Lal Singh
R/o. C-3/K, C.C.A. Barracks,
Anand Parwat
New Delhi.

... Respondents.

Through: Mr. I.S. Kapur with Mr. Deepak for
respondents No.6 & 7.

Coram:
HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

V.B.Gupta, J.

In this appeal, there is a challenge to the award dated 19th January, 2004, passed by Motor Accident Claims Tribunal (for short as 'Tribunal').

2. Brief facts of this case are that Shyam Sunder Thakur (since deceased) died in a road accident on 26th September, 1985. Vide impugned award, legal heirs of deceased were awarded compensation for sum of Rs. 3,75,000/- along with interest and appellant was directed to make the payment of award amount.

3. Notice of this appeal was issued to all the respondents. Initially counsel for all the respondents appeared but later on counsel for respondents No.1 to 5 absented and did not appear.

4. It is contended by learned counsel for appellant that despite liability of appellant being a limited one, the Tribunal erroneously directed the appellant to pay entire awarded amount to the claimants. However, before fastening the liability upon the insurers, Tribunal had not recorded a finding in the impugned award that any higher premium had been paid by the insured to extend the limits of liability under the policy.

5. So far as the issue of liability of the Insurance Company being limited, Smt. Renuka Kapoor, Assistant Administrative Officer of appellant appeared in witness box. Appellant also placed true copy of the insurance policy on record. The original of the insurance policy could not be placed on record since the same had been given to the insured, respondent No.6, at the time of issuance of the policy and the original policy is always in the custody and possession of the insured. The copy of the policy which was filed by the appellant before the Tribunal is not challenged by the insured as a forged document. Despite notice dated 25.09.2002 issued to the respondent No.7 for production of the original policy before the Tribunal, the same was not placed on record by the insured/owner.

6. It is further contended that Tariff Regulations had been placed on record of the Tribunal by the appellant. As per the said Tariff Regulation, in case a premium of Rs.240/- is charged, the liability of the Insurance Company can only be to the extent of Rs.50,000/-. Even in terms of the policy also it is apparent that a premium of Rs.240/- for covering Third-party risk had been charged from the

insured and therefore, the liability of the Insurance Company in terms of third-party risk can only be to the extent of Rs.50,000/-.

7. On the other hand, it has been contended by learned counsel for respondents No.6 & 7 that admittedly appellant has failed to prove that its liability was limited one since no proposal form has been produced by the Insurance Company. Moreover, the signatory to the carbon copy of the policy has also not been examined and no explanation has been rendered as to why the carbon copy of the policy has been signed in the original. Thus, there is no ambiguity in the judgment of the trial court.

8. Appellant has not proved even the carbon copy in accordance with law. Moreover proposal form has not been produced which would have proved the nature of insurance policy as to whether it was statutory or contractual one. No receipt of payment of premium by the insured has also been placed on record. All these documents are in the possession of the appellant but appellant for the reasons best known to him did not produce the same before the trial court.

9. Trial court in this regard observed;

“After carefully examining the above oral and documentary evidence adduced by the parties, I am constrained to say that the Insurance Company has failed to prove that the liability of the Company was a limited one. Apart from the fact that no proposal form has been produced, which would have unequivocally proved the nature of the insurance policy, and as to whether it was a statutory or a contractual one, no receipt for payment of premium by the insured has been placed on record. This assumed significance from a bare glance at the so called carbon copy of the policy. It is true that the contents of the policy are in carbon, but it bears the signatures in original, that is, in blue ink of the authorized signatory of

the insurer. Thus, quite evidently, insurance policy Exhibit RW1/4 cannot be taken to be the carbon copy of the original. To make matters worse, the signatory has not been examined to state that the carbon policy in question was prepared by him from the original. Nor has any explanation been rendered for his non-examination or as to why the carbon copy of the policy is signed in original. There is one further fact which impels me to hold that the Insurance Company has failed to prove document Exhibit RW1/4 as the carbon copy of the original. This is a photocopy of the certificate of insurance filed by the respondent No.2 viz the insured which appears on the record. The fact that this document was filed by the insured appears in an order sheet recorded on 11.11.1987 by the then learned Tribunal. The said certificate of insurance militates against the theory of limited liability of the Insurance Company. Presumably, therefore, the Insurance Company has, in a bid to escape the contractual liability undertaken by it, taken the plea of limited liability. It has, however, miserably failed to prove that carbon copy of the insurance policy Exhibit RW1/4 is a carbon copy prepared from the original policy. In the circumstances, therefore, the third party liability of the Insurance Company must be held to be an unlimited one.”

10. I fully agree with the reasoning given by the Tribunal. There is no infirmity or illegality in the above findings of the Tribunal. Hence, there is no merit in this appeal. Present appeal is hereby dismissed with costs of Rs.10,000/-.

11. Appellant is directed to deposit the costs with Registrar General of this Court within four weeks from today, failing which Registrar General shall recover the same in accordance with law.

12. Compensation amount lying deposit with the Tribunal be paid to the claimants, after expiry of period for filing of the appeal, in the manner and proportion as ordered by the Tribunal in the impugned judgment.

13. Trial court record be sent back.

14. List for compliance on 6th January, 2010.

24th November, 2009
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V.B.GUPTA, J.