

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 11th November, 2013
Pronounced on: 22nd November, 2013

+ **MAC.APP. 629/2005**

THE NEW INDIA ASSURANCE CO.LTD

..... Appellant

Through Mr. Pankaj Seth, Advocate

versus

NARINDER KAUR & ORS.

..... Respondents

Through Mr. Y.R. Sharma, Advocate for
Respondents No.1 to 3.
Mr. Jitender Chaudhary, Advocate for
Respondent No.5.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G.P. MITTAL, J.

1. The Appellant New India Assurance Co. Ltd. impugns a judgment dated 11.04.2005 aggrieved by the order of the Motor Accident Claims Tribunal(the Claims Tribunal) whereby while awarding a compensation of ₹14,85,000/- in favour of Respondents No.1 to 3, the Claims Tribunal directed the Appellant to pay the compensation in the first instance with a right to recover the same from the insured/owner(Respondent No.5) by way of bringing separate legal proceedings as per law.
2. The Appellant does not dispute the quantum of compensation awarded and although the insured (Respondent No.5) herein is contesting the instant appeal but he also did not challenge the impugned award. The

Claims Tribunal opined that the cover note Ex.R3W1/B was the result of the fraud. It is also noteworthy that the driver and the owner/insured, that is, Respondents No.4 and 5 respectively, preferred not to contest the proceedings before the Claims Tribunal and were ordered to be proceeded *ex parte*. Thus, there was no contest of the claim application by the owner and the driver. How the cover note Ex.R3W1/B was given to the legal heirs of the Claimants is a mystery and unknown. Even in these proceedings, Respondent No.5 has not come out as to how he obtained the cover note in question.

3. What the Claims Tribunal had to say about the liability to pay the compensation is extracted hereunder:

“19. R3W1 Pramod Kumar Jain testified that the impugned cover note No. 8936777 Ex. R3W1/B was issued by Mr. L.M. Kansal, their Development Officer, posted at Gajraula Branch. He produced the entire relevant record in original. His evidence suggests that fraud was played probably by insured in collusion with the Development Officer. It is apparent since the impugned cover note Ex. R3W1/B bears the date of insurance as 15-11-01. That could not have been since the earlier cover note no. 893676 was issued on 19-11-01. In fact, the cover note no.893678 i.e., the one subsequent to the impugned cover note, was issued on 20-11-01. The copies of the cover notes prior and subsequent to the impugned cover note are Ex. R3W1/A-1 and R3W1/A-2 respectively.

20. It is further in evidence that as per the original cash register, no cash collection was made by their branch towards the premium either on 15-11-01 or on 19-11-01, the copies of which are Ex. R3W1/C-1 and R3W1/C-2 respectively. The cover notes were in the custody of the Development Officer in running numbers and R3W1 testified that the impugned cover note was issued without putting any date of insurance i.e., the date of issue, nor the period, for which the policy was to be effective, given. This is reflected from the original carbon copy of the impugned cover note. His evidence clearly suggests that

the date of issue 15-11-01 was put subsequently.

21. There is no quarrel with the proposition of law that fraud vitiates everything. It is also in evidence that fraud was detected by R3W1 on 14-01-02 and Mr. Kansal was suspended on 15-01-02 and facing disciplinary inquiry. However, the above observations made by me cannot be said to be conclusive since the matter at their end is still subjudice. The Insurer Company did not issue any notice to the insured thereby cancelling or revoking the policy of insurance even after detecting of such fraud. The Insurance Company has not even chosen to lodge a criminal complaint against the insured or its officer. At the cost of repetition, the evidence that fraud was played, is probable but not yet conclusive. Assuming for the sake of convenience, even if there was a fraud or that policy was obtained in connivance with an officer of the Insurance Company, I fail to fathom as to how could the Insurance Company avoid its liability to pay compensation to the claimants. The third party rights certainly cannot be effected.

22. Mr. Shahilya, ld. counsel for the Insurance Company here vehemently urged that at least the Insurance Company may be given the recovery rights against the insured and the erring official. That, to my mind, is certainly warranted by the facts and circumstances on the record of the case provided there is a clear finding on this aspect by a competent court.

23. Therefore, the liability to pay compensation is imposed on the Insurance Company i.e., respondent no. 3, which be paid to the claimants within 30 days from today.

24. The Insurance Company shall be at liberty to recover the amount of compensation paid by it to the claimants from the erring official and the insured by way of bringing separate legal proceedings as per law.”

4. A perusal of the copy of the cover note Ex.R3W1/B shows that it contained two numbers, that is, 893677 and 893673. Admittedly, the insured as shown in this cover note did not contest the proceedings and,

therefore, the original cover note never saw the light of the day. Mentioning of the two numbers on the cover note by itself shows some forgery about the same. The Insurance Company, *i.e.*, the Appellant duly produced the cover note No.893676(Ex.R3W1/A-1) and 893677(Ex.R3W1/A-2) and the genuine copy of the cover note No.893678 which was in respect of a different vehicle and was of a date subsequent to the date of the accident. The Claims Tribunal was conscious of the fact that the cover note in question was a forged one issued after the date of the accident. Once the Claims Tribunal was convinced that the cover note was issued after the date of the accident, it had no jurisdiction to make the Insurance Company liable as it was obtained by the insured fraudulently in collusion with some agent/employee of the Appellant. The Insurance Company ought not to have been made liable to pay the compensation even in the first instance granting it right to recover the same subsequently from the insured.

5. Insurer is normally made liable to pay the compensation where the vehicle is duly insured but the insured is guilty of breach of the terms and conditions of policy entitling the insurer to avoid its liability as provided under Section 149(2) of the Motor Vehicles Act, 1988. It is well settled that fraud vitiates all transactions known to law. By adducing relevant evidence in the shape of testimony of R3W1, the Appellant sufficiently established that the cover note in question was never issued; nor any premium was ever accepted by or deposited with the Appellant. In the circumstances, the Claims Tribunal acted illegally in fastening the liability on the Appellant even in the first instance although granting recovery rights to it.
6. The impugned order which makes the Appellant liable to satisfy the

award in question cannot be sustained; the same is accordingly set aside. It goes without saying that Respondents No.1 to 3 shall be entitled to enforce the award against Respondents No.4 and 5 herein, that is, the driver and the owner of the Truck No.URP-8865 involved in the accident.

7. The appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

NOVEMBER 22, 2013

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