

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

+ MAC.APP. No.1120/2011 & CM. No. 22474/2011

% Judgment reserved on: 22nd February, 2013
Judgment delivered on: 18th March, 2013

UNITED INDIA INSURANCE CO LTD. Appellant
Through: Mr.Abhishek Kumar, Advocate.

Versus

GUDDY & ORS. Respondents
Through: Mr.V.K.Ravi, Advocate.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

MAC.APP. No.1120/2011

1. The present appeal has been preferred against the award judgment dated 09.09.2011 passed by the learned Tribunal, whereby the appellant/Insurance Company has been held liable to pay compensation in favour of the claimants.

2. The grounds agitated in the instant appeal are that the learned MACT has not considered the evidence on record i.e. certified copy of the cover note (R1W1/A) and original insurance proposal (R1W1/B), which clearly show that the original cover note No. 140017 only covered a TVS Suzuki Motor Cycle in the name of insured-Sh.Salim w.e.f. 14.01.2001 to 13.01.2002.

3. Brief facts of the case are that deceased Megh Nath, who was Tailor by profession met with an accident in Ijjat Nagar, Bareli, U.P on 07.04.2002, when he was riding a bicycle. The said accident was caused by a tractor bearing No.UP25H6105. At the time of accident, above named deceased was 40 years of young age.

4. Learned counsel appearing on behalf of the appellant/Insurance Company has submitted that the learned Tribunal has wrongly relied upon the fact that the appellant had not moved any application before the learned CJM, Bareli in case of releasing the vehicle on *superdari*. He submitted that the appellant/Insurance Company was neither made a party before the learned CJM, Bareli nor they knew that the above noted vehicle was released on *superdari*.

5. He further submitted that the appellant/Insurance Company has discharged its duty by leading direct evidence of Mr. N.K.Arora, the Deputy Manager, posted and working in Divisional office of the Insurance Company at Agra, who deposed that the cover note No. 140017 was not the cover note of the offending tractor and the original insurance proposal and the certified copy of the cover note was not in favour of the respondent No.6.

6. It is further submitted, learned Tribunal has not taken into consideration the fact that the owner/respondent No.6 has not proved on record that the offending tractor was insured with the appellant/Insurance Company vide cover note No.140017. Thus, the learned Tribunal has wrongly relied upon the procured photocopy of

the cover note and wrongly connected the same with the appellant/Insurance Company.

7. Learned counsel for the appellant/Insurance Company has further submitted that the Insurance Company took a plea before the learned Tribunal that it could not be held liable as the vehicle was not covered under any insurance policy.

8. To prove the onus, evidence brought by the Insurance Company is the testimony of the Deputy Manager, posted and working in the Divisional Office of the Insurance Company at Agra. The said witness deposed that as per record of their Divisional Office, Agra, cover note No. 140017 had in fact been issued in favour of one Salim for his vehicle TVS Suzuki Motorcycle for a period from 14.01.2001 to 13.01.2002. He exhibited the certified copy of that cover note as R1W1/A. He also exhibited the original insurance proposal of this cover note as R1W1/B. According to these documents, the vehicle covered under these notes was TVS Suzuki. He has also deposed that a notice Under Order 12 Rule 8 CPC was issued to Salim to produce the original cover note to which he did not respond. To this effect, notice is exhibited as R1W1/D and its postal receipt is exhibited as R1W1/E.

9. Learned counsel for the appellant/Insurance Company has argued that in the cover note relied upon, which is at page No. 21 of the paper book, there is no premium mentioned and no signature and stamp of the Company.

10. Thereafter, argued in affirmative that there is a premium mentioned and stamp and signatures are also affixed, however, submitted that the said document has never been issued in the name of the owner of the tractor, the offending vehicle in question.

11. Learned counsel for the appellant/Insurance Company has drawn the attention of this Court to Para 5 of the document Ex.R1W1/1, wherein stated as under:-

“5. That under the said cover note No. 140017 Tractor No. UP-25H-6105 was not insured. Accordingly in the present claim petition my company is not liable to pay compensation, and is liable to be discharged.”

12. He submitted that the cover note, which has been relied upon by the learned Tribunal is forged and fabricated, therefore, the appellant/Insurance Company is not liable to pay any compensation and the instant appeal may be allowed.

13. Learned counsel has relied upon a case of ***S.M.Sharmila Vs. National Insurance Company Limited & Ors., (2012) 2 SCC 770***, wherein the Apex Court has held as under:-

“8. Case of the Appellant-owner before the Commissioner for Workmen's Compensation was that the vehicle in question had been insured with the Respondent, Insurance Company for a period commencing from 14th May, 1997 to 13th May, 1998 and believing the aforestated submission to be correct, the Commissioner had directed that compensation be paid by the Insurance Company.

9. The aforestated finding arrived at by the Commissioner had not been accepted by the High Court as the High

Court came to the conclusion that the vehicle in question was insured for a period commencing from 3rd March, 1997 to 2nd March, 1998 and, therefore, the vehicle was not insured on the date when the accident had taken place.

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11. On the other hand, Mr. Gupta, Learned Counsel appearing for the Respondent-Insurance Company vehemently submitted that for the reasons recorded in the judgment, the High Court had rightly accepted that the vehicle in question was insured for a year commencing from 3rd March, 1997 to 2nd March, 1998. He drew our attention to the fact that the amount of premium was paid in cash on 3rd March, 1997 and the said fact was duly recorded in the premium register, a copy of which had been exhibited as Exhibit R2-7. He further submitted that as per postage book of the Insurance Company, the insurance policy had been dispatched on 25th March, 1997. He submitted that in normal circumstances, upon receipt of cash by way of premium, cover note is sent to the concerned person and after about a fortnight, insurance policy is sent to the concerned person. He further drew our attention to a copy of cover note which had been issued by the Insurance Company stating the fact that premium was paid in cash on 3rd March, 1997.”

14. To sum up, learned counsel has argued that the cover note in question has never been issued to the owner of the tractor mentioned above, therefore, the appellant/Insurance Company cannot be held liable to pay the compensation in favour of the claimants/respondents.

15. On the other hand, Mr. V.K.Ravi, learned counsel appearing on behalf of the respondents/claimants has submitted that the appellant/Insurance Company has failed to bring any witness to prove

that the cover note Ex.R1W1/A was issued in the name of Sh. Salim. The owner of the above noted TVS Suzuki Motorcycle has not been produced as a witness, therefore, their stand cannot be proved, whereas the respondents/claimants have proved the cover note in question.

16. Learned counsel further submitted that the issuing authority of both the cover notes is same. There are signatures of the officers, stamp of the company and premium paid by the owner of the tractor, which would suffice that the said cover note is genuine, therefore, the learned Tribunal has relied upon.

17. Moreover, learned Tribunal has recorded in its judgment that in cross-examination the aforesaid Sh. N.K. Arora, the Deputy Manager deposed that such cover notes are issued by the Development Officers and cover note Ex.R1W1/A had been issued by one Sh. Mahender Singh, Development Officer. He simply denied that Ex. PA has been issued from his Company. He also admitted that no action had been taken against the accused or owner of the tractor for producing a forged document and taking the benefit of the said document.

18. I have heard the learned counsel for the parties.

19. I note, as recorded by the learned Tribunal that no one appeared for the appellant / Insurance Company to argue this matter before it. Therefore, the learned Tribunal has recorded that since none appeared for such a long time for the Insurance Company and the accident occurred in the year 2002, therefore, it had no option but to proceed with the matter.

20. Case of the respondents/claimants before the learned Tribunal was that the cover note Ex.PA, which has been produced by the police, seized in a criminal case. On the basis of such note, the vehicle was released by the police on *superdari* to the owner of the tractor.

21. The learned Tribunal has relied upon the certified copy of the order filed by the claimants, which showed that owner of the tractor placed before the learned CJM, Bareilly, certain documents i.e. the R.C, insurance cover note, driving licence etc. and after considering those documents that tractor was ordered to be released on *superdari*.

22. Moreover, during investigation, the police had seized the above noted documents from the owner of the tractor bearing No. UP25H6105 and said cover note proved that the offending tractor was insured for a period from 10.01.2002 to 09.01.2003.

23. The learned Tribunal has rightly observed that the Insurance Company then ought to have examined its development officer to depose specifically that the said cover note had not been issued from the office of the Insurance Company. If owner of the vehicle had produced this cover note before the learned CJM while getting vehicle released on *superdari*, then the Insurance Company ought to have taken steps by moving appropriate application in the Court of the learned CJM, Bareilly and action should have been taken against the culprits.

24. As argued by the learned counsel for the appellant/Insurance Company that since they were not party before the learned CJM,

Bareli, therefore, there was no occasion to take action against the owner of the tractor. I do not find any force in the submission of the learned counsel for the appellant/Insurance Company for the reason that even thereafter, when this fact was brought in the notice of the Insurance Company, till date no action has been taken against the owner of the tractor. The Insurance Company has also failed to produce any of the officers who would have proved that the said cover note had not been issued by the appellant/Insurance Company and the signatures and stamp affixed on the same were forged.

25. Disagreeing with the submission of the learned counsel for the appellant/Insurance Company, the learned Tribunal has opined that even if the Insurance Company claimed to have issued the cover note No.140017 for motorbike, but the fact remains that against the tractor in question had also been issued a cover note as Ex.PA. Unless the authorised Development Officer, who had issued this cover note Ex.PA or the official from that particular office from where this cover note appeared to have been issued was examined to speak on the correctness and genuineness of the cover note. In the absence of any action initiated by the Insurance Company before the court of the learned CJM, Bareli or thereafter before the appropriate authorities, the plea taken by the Insurance Company is not acceptable.

26. In view of the above discussion, I find no discrepancy in the award dated 09.09.2011 passed by the learned Tribunal. Therefore, I am not inclined to interfere with it.

27. Consequently, the instant appeal is dismissed with no order as to costs.

28. The Registrar General of this Court is directed to release the awarded amount in favour of the respondents/claimants in terms of the order dated 09.09.2011 passed by the learned Tribunal.

29. The statutory amount of Rs.25,000/- shall be released in favour of the appellant/Insurance Company.

CM. No. 22474/2011 (for stay)

With the disposal of the petition itself, the instant application has become *infructuous*.

The same is accordingly disposed of.

SURESH KAIT, J.

MARCH 18, 2013

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