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

% *Judgment delivered on: 12th March, 2014*

+ **MAC.APP. 649/2005 & CM No.10642/2005**

NATIONAL INSURANCE CO LTD. Appellant
Represented by: Mr. Prapeep Gaur, Advocate.

Versus

SUBHASH GUPTA & ORS Respondents
Represented by: Mr. S.N. Parashar, Advocate.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

MAC.APP. 649/2005

1. The instant appeal is preferred against the award dated 16.02.2005, whereby the learned Tribunal awarded compensation for a sum of Rs.1,41,320/- with interest @ 6% *per annum* from the date of filing of the petition till realization of the amount.

2. The main ground taken in the instant appeal is that the accident had taken place on 30.01.2003 and on the said date, the offending vehicle was not insured with the appellant/Insurance Company. Despite, Ld. Tribunal has directed the appellant to pay the compensation amount in favour of the claimant even without granting recovery rights against respondent No.2, i.e., owner of the offending vehicle.

3. Learned counsel appearing on behalf of the appellant submits that the preliminary objections of the Insurance Company was that on the date of accident, the policy in question was valid from 04.02.2003 to 03.02.2004, thus, the said vehicle was not insured with the Company.

4. Learned Counsel submits that even in written statement filed before the learned Tribunal, it was specifically mentioned that the offending vehicle bearing No. DDL-6760, a Matador, which involved in the alleged accident, was insured with the Policy bearing No. 360501/31/02/6725827 for the period from 04.02.2003 to 03.02.2004. However, the accident had taken place on 30.01.2003. Thus, on the date of accident, the said vehicle was not covered under the aforesaid policy.

5. Learned counsel further submits that the accident had taken place on 30.01.2003. On the said date, driver of the offending vehicle was not holding a valid driving license. The driving license on record was expired on 17.08.2002 and thereafter renewed on 17.02.2004. Thus, on the date of accident, the said license was not valid.

6. It is further submitted that the appellant/Insurance Company issued notice under Order 12 Rule 8 CPC to the driver and owner of the offending vehicle to produce the original insurance policy and the driving license. However, they failed to do so.

7. It is pertinent to mention here that respondent No. 2, i.e., owner of the offending vehicle neither replied to the notice Under Order 12 Rule 8 CPC nor appeared before the Ld. Tribunal, therefore, he was proceeded *ex-parte*.

In the present appeal, service was effected upon the said respondent No.2 through citation, despite, appeared none on his behalf.

8. The appellant/Insurance Company examined R2W1, Sh. Balwan Singh, Assistant Administrative Officer of the Company, who had produced the dispatch register containing the entries regarding dispatch of the Insurance Policies to the insured persons w.e.f. 08.11.2002 to 11.04.2003. From the said register, it was revealed that the Policy Ex.R2W1/B was dispatched to the insured on 21.02.2003 vide entry in the Register Ex.R2W1/C. He also proved that the notice under Order 12 Rule 8 CPC was sent to insured Sh. Umed Singh through Registered Cover, office copy of which is proved as Ex.R2W1/D. Postal receipt is Ex.R2W1/E and AD Card is Ex.R2W1/F. He further deposed that despite service of the said notice, the insured did not produce the original policy.

9. In the cross-examination, he deposed that whenever a vehicle is to be insured a Proposal Form is required to be filled by the tentative insured and in the present case also Proposal Form must have been filled by the insured. However, the Proposal Form was not produced before the learned Tribunal in the present case.

10. R2W1 also produced the carbon copy of the cover note Ex.R2W1/A. As per the same, the date of risk was mentioned as 04.01.2003 to 03.01.2004. The risk cover in the cover note was also mentioned w.e.f. 04.01.2003 to 03.01.2004 and the date of issuance of the cover note was 03.01.2003.

11. R2W2, Manmeet Singh, Agent of the Insurance Company, deposed before the learned Tribunal that he had issued the Cover Note in respect of the offending vehicle in favour of Umed Singh which bears the date of issuance as 03.01.2003, whereas the actual date of issuance was 03.02.2002. He deposed that the said date was mentioned under mistake (mistakenly).

12. From the testimony of R2W2, Manmeet Singh, the learned Tribunal has opined that cover note in dispute remained with the Insurance Company since February, 2003, despite that no efforts were made by the Insurance Company to either cancel the cover note or to make necessary corrections therein after giving notice to the insured and the cover note Ex.R2W1/A was never withdrawn by the Insurance Company. As such merely the insured failed to produce original insurance policy despite service of notice is of no consequence.

13. As per the record of collection register and premium register dated 04.02.2003 produced by the learned counsel for the appellant/Insurance Company during arguments of this appeal, the Agent concerned had deposited premium amount with Insurance Company on 04.02.2003, accordingly, insurance policy was issued with effect from 04.02.2003 to 03.02.2004. Learned counsel for the appellant has fairly conceded that the premium amount was recovered by the Agent and cover note was also issued by the Agent/Development Officer of the company. It is not necessary for the agent to deposit the amount on the same day with the company. However, the Agent may deposit the amount after ten or fifteen days or whenever he wants and the insurance policy will be issued only thereafter.

14. The fact remains, cover note was issued for the period from 04.01.2003 to 03.01.2004.

15. During hearing of the appeal, this Court specifically asked the counsel for the appellant to produce the series of the cover notes. However, the appellant company failed to do so. Then this Court especially asked the appellant to produce the Cover Notes issued before and after the Cover Note in question, to which he failed.

16. In my considered opinion, it is established that the cover note was issued on 03.01.2003 which covered the period from 04.01.2003 to 03.01.2004, whereas, the accident had taken place on 30.01.2003.

17. So far as the issue that on the date of the accident driver of the offending vehicle was not holding valid driving licence is concerned, perusal of the record shows that ground of invalidity of the license was not taken by the Insurance Company before the learned Tribunal and had contested the case only on the ground that the vehicle was not insured on the date of accident.

18. Therefore, the appellant/Insurance Company cannot take this ground at the appellate stage with a view to fill up lacunas in the evidence, especially when the application for additional evidence was dismissed by this Court vide order dated 28.01.2014.

19. In view of the above discussion, I do not find any merit in the instant appeal. The same is, accordingly dismissed.

20. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant/Insurance Company and the

balance compensation in favour of the respondent No.1/injured in terms of the award dated 16.02.2005.

CM. No. 10642/2005 (For Stay)

With the dismissal of the instant appeal itself, the instant application has also become *infructuous* and disposed of as such.

SURESH KAIT, J.

MARCH 12, 2014

Jg/sb