

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

+ **RSA No.280/2016**

% **27th July, 2017**

NATIONAL INSURANCE COMPANY LTD. Appellant

Through: Mr. Manoj R. Sinha, Advocate.

versus

M/S MALHOTRA TRADERS Respondent

Through: Mr. B.S.Dhir, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the first appellate court dated 27.1.2016. The first appellate court vide its impugned judgment dated 27.1.2016 has set aside the judgment of the trial court dated 28.9.2013 whereby the trial court had dismissed the suit for recovery of Rs.1,57,300/- filed by the respondent/plaintiff claiming the amount of the value of the vehicle covered under the insurance policy. The first appellate court while allowing the first appeal and decreeing the suit

filed by the respondent/plaintiff held that the vehicle was stolen during the currency of the policy i.e after a cover-note was issued by the agent of the appellant/defendant and counter-signed by the officer of the appellant/defendant company and whereafter theft of the vehicle took place.

2. The facts of the case are that the respondent/plaintiff was the owner of the vehicle Maruti Esteem bearing registration no. DL-4CC-6186. This vehicle was regularly insured by the respondent/plaintiff from the appellant/defendant company from the year 1997. The last period covered under the insurance policy was 28.12.1999 to 27.12.2000 and when it expired. Thereafter, as per the respondent/plaintiff, there was a break in the policy for two days, and a fresh cover-note was got issued on 29.12.2000 by the respondent/plaintiff from the agent of the appellant/defendant company and which cover-note was duly countersigned by the employee (Assistant Administrative Officer) of the appellant/defendant company. Cover-note was issued on the insurance premium cheque of Rs.2906/- dated 29.12.2000 bearing no.006275 drawn on Oriental Bank of Commerce, Kingsway Camp Branch,

Delhi and was handed over by the respondent/plaintiff to the agent of the appellant/defendant insurance company. The vehicle in question is said to have been stolen from outside Palika Bazaar, New Delhi on 31.12.2000 and with respect to which an FIR was lodged on 1.1.2001. Respondent/plaintiff claims that he informed both the agent of the appellant/defendant company as also the officer of the appellant/defendant company on 31.12.2000 and 1.1.2001, and also ultimately informed this fact in writing to the appellant/defendant company on 15.1.2001. Since the appellant/defendant company refused to pay the insured amount, the subject suit came to be filed.

3. The appellant/defendant contended that the cover-note issued was as a result of collusion of the respondent/plaintiff with the agent Sh. Girish Chawla of the appellant/defendant company who had issued the said cover-note, and that there was further collusion with the employee Sh. Ravi Jain (Assistant Administrative Officer) of the appellant/defendant company who had countersigned the cover note. The appellant/defendant claimed that the vehicle was stolen on 31.12.2000 but there was no valid cover-note issued on 29.12.2000 and in fact the cover-note was got issued after the theft of the vehicle

giving a back-dated cheque of 29.12.2000 and getting the cover-note issued of the same date of 29.12.2000, and which as stated above is on account of collusion of the respondent/plaintiff with the agent Sh. Girish Chawla and the employee of the appellant/defendant company Sh. Ravi Jain.

4. The trial court dismissed the suit by holding that the cover-note has got been issued on account of fraud and cheating being perpetrated on the appellant/defendant company. Trial court in this regard relied upon the fact that the cheque no.6275 was not issued on 29.12.2000 inasmuch as the copy of the bank account filed by the respondent/plaintiff showed that the earlier serial number cheques bearing nos. 6721-24 were in fact issued subsequent to 29.12.2012 but got cleared earlier than the premium cheque no. 6725. The trial court disbelieved the case of the respondent/plaintiff that the cheque for the premium amount was given by the respondent/plaintiff to the agent of the appellant/defendant company on 29.12.2000. Trial court therefore held that the cover-note in question no. 521799 was not issued on 29.12.2000 but was actually issued on 1.1.2001 and hence vehicle was

not covered by an insurance policy on the date of theft being 31.12.2000.

5. The first appellate court has set aside the judgment of the trial court and decreed the suit for recovery by holding that the cover-note was issued on 29.12.2000 and this becomes clear from the fact that no action has been taken by the appellant/defendant company against its officer Sh. Ravi Jain who has countersigned the cover-note and that Sh. Ravi Jain was not even brought as a witness by the appellant/defendant company. I have also put a query to the counsel for the appellant as to whether any departmental action was taken against Sh. Ravi Jain or any criminal case filed against Sh. Ravi Jain for allegedly counter-signing the cover-note back-dated, however, it is conceded that there is no record filed in this case which shows that any departmental action was taken by the appellant/defendant company or that any criminal complaint was filed against Sh. Ravi Jain for cheating and defrauding.

6. Learned counsel for the appellant/defendant once again argued the same aspects which were accepted by the trial court and also further argued that appellant/defendant had taken action against

the agent Sh. Girish Chawla by cancelling his agency vide letter dated 9.1.2003 and put a ban on his renewal, however, the fact of the matter is that the crucial cog in the wheel in this case was the employee of the appellant/defendant itself namely Sh. Ravi Jain and who countersigned the note on 29.12.2000. Ranking of Sh. Ravi Jain is of an Assistant Administrative Officer and not some Class-IV employee. Not only that a criminal case was not filed against Sh. Ravi Jain, even departmental action has not been taken against Sh. Ravi Jain that he has back-dated signed the cover-note on 29.12.2000 though the cover-note was actually issued on 1.1.2001. Hence the first appellate court was entitled to arrive at the conclusion that there was no back dating of the cover-note. The conclusion arrived at by the first appellate court is one possible and plausible view, that it may happen on certain occasions that serial number of some cheques may be of an earlier point of time/date and a later serial number of the cheque can be issued on an earlier date, and which is not a conclusion which is completely inconceivable in fact and law.

7. The fact of the matter is that from the totality of the evidence the first appellate court, which is a court which is entitled to

reappraise the findings and facts of law, has come to a conclusion that the cover-note was in fact issued on 29.12.2000 and the vehicle was thereafter stolen on 31.12.2000. It is further to be noted that the first appellate court was justified in arriving at the conclusion which is arrived at for the additional reason which this Court gives under Order XLI Rule 24 CPC that both Sh. Girish Chawla and Sh. Ravi Jain were agents of the appellant/defendant company and not of the customer/respondent/plaintiff. It was upon the agents of the appellant/defendant company to deposit the cheque received from the respondent/plaintiff and that the duty of the respondent/plaintiff came to an end on handing over of the premium cheque to the agent of the appellant/defendant company Sh. Girish Chawla on 29.12.2000. A principal is bound by the act of its agent, and therefore, appellant/defendant company was bound by the act of its agent Sh. Girish Chawla and giving of cheque by the respondent/plaintiff to Sh. Girish Chawla is giving of cheque to the appellant/defendant company itself. If there is any delay in deposit of the cheque instead of on 29.12.2000 but subsequently on 1.1.2001, that lapse is of the agent and the employee of the appellant/defendant company, and the

respondent/plaintiff cannot be denied the insurance claim amount on account of any lapses and inadequacies of action of the agent and employee of the appellant/defendant company.

8. I therefore hold that the first appellate court was justified in decreeing the suit by directing payment of the loss value of the vehicle to the respondent/plaintiff.

9. No substantial question of law arises. Dismissed.

10. Any amount deposited in this Court by the appellant be released to the respondent in appropriate satisfaction of the subject judgment and decree passed by the first appellate court in terms of the impugned judgment dated 27.1.2016.

JULY 27, 2017/ib

VALMIKI J. MEHTA, J