

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 872 of 1998

Appellant :- National Insurance Co. Ltd.

Respondent :- Smt. Shyama Devi And Others

Counsel for Appellant :- Kuldip Shanker Amist

Hon'ble Saral Srivastava,J.

Order on Application under Order 41 Rule 27 of C.P.C.

Heard learned counsel for the appellant/applicant.

The present application under Order 41 Rule 27 of C.P.C. has been filed by the appellant to take the insurance policy of the offending vehicle i.e. Truck No.R.J-19-G-0728 as additional evidence on record on the following grounds:-

"6. That in the meantime, the Motor Accident Claims Tribunal also passed the award dated 26.05.1998 holding that the truck RJ19G/0728 was insured with the Appellant at the time of the accident but as no action, in pursuance of the award, could be taken as per the provisions of the Insurance Act, unless confirmation of the compliance of section 64VB of the Insurance Act by the Office of the Appellant which issued the insurance policy, the Allahabad Divisional Office sent its reminders through letters dated 27.7.1998, 3.8.1998, 10.8.1998 and 24.8.1998 to Madanganj-Kishangarh Branch Office of the Appellant and its Divisional Office at Ajmer under which the said Branch Office was working.

7. That thereafter on 3.9.1998, Allahabad Divisional Office of the Appellant received the certified copy of Insurance Policy No.370703/1359-63/1371 and the certificate dated 10.8.1998 under section 64VB of the Insurance Act alongwith letter dated 26.8.1998 of Ajmer Divisional Office of the Appellant. In the meantime, Allahabad Divisional Office also received the copy of the letter dated 3.8.1998 of Madanganj-Kishangarh Branch Office addressed to Ajmer Divisional Office on 17.8.1998.

8. That it appeared that earlier Madanganj-Kishangarh Branch Office of the Appellant, alongwith its letter dated 3.8.1998, had sent the certified copy of the Insurance Policy No.37070/1395-63/1371 and the certificate for compliance under section 64VB of the Insurance Act to Ajmer Divisional Office which sent the said documents alongwith its letter dated 23.3.1998 to Allahabad D.O. But Allahabad Divisional Office of the Appellant did not receive the letter dated 23.3.1998 alongwith the said documents."

The aforesaid contents of the affidavit filed in support of the application under Order 41 Rule 27 of C.P.C. do not indicate as to

why same could not be filed before the Tribunal.

Since, the conditions enumerated in application under Order 41 Rule 27 of C.P.C. to accept the additional evidence i.e. insurance policy on record are not present to allow the present application, therefore, the application under Order 41 Rule 27 of C.P.C. being misconceived is ***rejected***.

Order on Appeal.

1. Heard learned counsel for the appellant.

2. The present appeal has been preferred by the appellant-insurance company challenging the award dated 26.05.1998 passed by the Motor Accident Claims Tribunal/IXth Additional District Judge, Allahabad (hereinafter referred to as 'Tribunal') in M.A.C.P. No.81 of 1997 whereby the Tribunal has awarded Rs.1,71,500/- along with 12% interest as compensation to the claimants/respondents.

3. Challenging the aforesaid award, learned counsel for the appellant has contended that offending vehicle i.e. Truck No.R.J-19-G-0728 was not insured with the appellant-insurance company. It is contended that insurance policy with regard to offending vehicle filed on record was a fake document as the owner has interpolated the date of commencement of policy in the insurance policy inasmuch as the insurance policy was valid w.e.f 05.01.1996 to 04.01.1997 whereas the owner interpolated the month in the date of commencement of insurance policy and presented the policy before the Tribunal by showing that insurance policy was valid from 05.11.1996 to 04.11.1997. In such view of the fact, it is submitted that no liability can be fastened upon the appellant-insurance company to pay compensation.

4. Be that as it may, the owner has filed the insurance policy before the Tribunal. The insurance company did not lead any evidence in rebuttal to the insurance policy filed by the owner. It is only after the award had been passed, the insurance company woke-up from slumber and obtained the copy of insurance policy indicating that interpolation has been made by the owner in the commencement of insurance policy. Accordingly, the insurance company filed an application under Order 41 Rule 27 of C.P.C. to take insurance policy as additional evidence on record. However, the said application has been rejected by this Court by order dated 27.10.2023.

5. Thus, for the reasons given above, the appeal lacks merit and is hereby ***dismissed*** with no order as to costs.

Order Date :- 27.10.2023
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