IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO. 142 OF 2001

The Oriental Insurance Co. Ltd.,
through Branch, Jalna APPELLANT

VERSUS

1. Mangalabai w/o Gorakhnath Kshirsagar, Age : 44 years, Occu. Household, R/o Bhavsar Galli, Tq. And District Jalna

2. Gorakhnath Uttamrao Kshirsagar, Age : 47 years, Occu. Service, R/o as above

3. Vithal Dhondiba Satpute, Age : 52 years, Occu. Business, R/o 116/3/2, Soos Road, Pashan, Pune, Tq. & Dist. Pune

4. The New India Assurance Co. Ltd., through Branch, Jalna RESPONDENTS

Mr. S.M. Godsay, Advocate for the appellant
Mr. S.P. Sonpawale, Advocate for respondents No. 1 and 2
None for respondent No. 3 though served
Mr. A.G. Kanade, Advocate for respondent No. 4

CORAM : M.T. JOSHI, J.
DATE : 22/01/2015

ORAL JUDGEMENT :

1. Heard learned counsel for the appellant,

learned counsel for respondents No. 1, 2 and 4. None appears for respondent No. 3 though duly served.

2. The only issue involved in the present appeal is as to whether the vehicle that was involved in the accident was insured with the present appellant.

3. The daughter of the respondents No. 1 and 2 has met with a motor vehicular accidental death on 26th January, 1996. A goods truck bearing registration No. MH-12/6915 gave dash to the girl while she was proceeding on bicycle. It was the case of the respondents No. 1 and 2 that the accident has occurred due to rash and negligent driving of the truck. In the circumstances, the petition came to be filed before the Motor Accident Claims Tribunal, Jalna, seeking compensation of Rs. 1,50,000/-.

4. The plea of the present appellant before the learned Member of the Tribunal was that the accident has occurred on 26th January, 1996. The insurance cover note bearing No. 911300 was purportedly issued by its agent Mr. A.B. Pitty on 25th January, 1996. In fact, said Mr. A.B. Pitty was authorized only to issue cover note for

brand new vehicles i.e. Bajaj Scooter and that too only from his show-room. However, by manipulating the papers, it was shown that the insurance cover-note was issued for the old truck a day prior to the accident and in fact, the amount of insurance premium was deposited by the said agent on 29th January, 1996 at 12.20 p.m. In the circumstances, it was submitted that the appellant is not liable to indemnify the truck owner in payment of compensation.

5. The learned Member of Motor Accident Claims Tribunal came to the conclusion that the cover-note is filed on record. There is no evidence regarding the cancellation of the same. Further, no evidence regarding the fraud alleged, is placed on record and therefore, it was held that the present appellant alongwith the truck owner would be liable to jointly and severally pay the compensation of Rs. One lac to the original claimants with interest at the rate of 12% per annum from the date of filing of the petition.

6. Mr. S.M. Godsay, learned counsel for the appellant, submits that in view of the provisions of

section 64-VB of the Insurance Act, 1938, the risk could not have been assumed unless the premium was received in advance.

7. On the basis of the above material on record, the following point arises for my determination :-

> “Whether the appellant is liable to indemnify the owner of the truck i.e. respondent No. 3 Vithal Dhondiba Satpute in payment of compensation ?

My finding to the above point is in the affirmative. The appeal is, therefore, dismissed, without any order as to costs, for the reasons to follow :-

R E A S O N S

8. A specific case of the appellant was that its agent Mr. A.B. Pitty had, in collusion with the present respondent No. 3, managed to issue the cover-note on 25th January, 1996 showing that the payment of premium was received on that day while the accident has occurred on

the next date i.e. 26th January, 1996. It was also pleaded that the said agent had a very limited authority to issue cover-note regarding the brand new Bajaj scooters and that too only from his show-room. However, no evidence at all was led by the present appellant in respect of these alleged facts.

9. The provisions of section 64-VB of the Insurance Act, 1938 read as under :-

> **"64-VB. No risk to be assumed unless premium is received in advance. -**
>
> (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.
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> (2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.
>
> *Explanation*. - Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

> (3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.
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> (4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.
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> (5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.
>
> (6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer."

10. The reading of the provisions would show that unless the premium is received in advance, no risk is to be assumed. In this case, the agent of the present appellant – Mr. A.B. Pitty had purportedly received the premium in advance at the time of issuing the cover-note. It could not be shown by any evidence that on the day of issuance of cover-note, the agent of the present appellant had limited authority or that there was

collusion between the agent of the present appellant and the truck owner i.e. present respondent No. 3. It is an admitted fact that Mr. A.B. Pitty was appointed as an agent by the present appellant. In the circumstances, the fact that the said agent has acted beyond his authority was required to be proved. In the circumstances, therefore, the provisions of Section 64-VB of the Insurance Act, 1938 would not be applicable in the facts of the present case. Hence, the following order:-

11. The appeal is dismissed without any order as to costs.

[M.T. JOSHI]
JUDGE

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