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

Decided on: 24th February, 2015

+ MAC.APP. 295/2007

NATIONAL INSURANCE COMPANY LTD..... Appellant

Through: Mr. Pradeep Gaur, Adv. with Mr. Amit Gaur, Adv.

versus

VAKIL PASWAN & ORS. ... Respondents

Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against the judgment dated 06.03.2007 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹33,000/- was awarded in favour of Respondent no.1 and the Appellant National Insurance Company Limited was made liable to pay the compensation.

2. The learned counsel for the Appellant urges that vehicle no.DL-1G-9273 which was involved in the accident was not insured with

the Appellant and, therefore, the Appellant had no liability at all to pay the compensation.

3. I have the Trial Court Record before me. In the Claim Petition filed by Respondent no.1, Respondnet no.2, Nemi Chand was claimed to be the owner and driver of the offending vehicle. In written statement filed by Respondent no.2 Nemi Chand(owner and driver), the involvement of the vehicle itself was denied. In reply to para 17 of the Claim Petition, it was stated that the vehicle was insured with Respondent no.3 (National Insurance Company Limited). However, in the Claim Petition, there was no Respondent no.3. Appellant National Insurance Company Limited was Respondent no.2. In any case, even if it is taken as a clerical error and it is assumed that Respondent no.2 referred the National Insurance Company Limited as the insurer, yet Respondent no.2 did not come forward or place on record any cover note or the Insurance policy issued in respect of the vehicle, to prove his averment particularly in view of the specific plea taken by the Appellant that the offending vehicle is not insured with it at all.

4. In para 1 of the preliminary objections, it was specifically stated by the Appellant that vehicle no.DL-1G-9273 alleged to be involved

in the accident is not at all insured with the Appellant. Although, Nemi Chand (Respondent no.2 herein) contested the Claim Petition but he preferred not to file any rejoinder or any reply to the written statement filed by the Appellant stating that the plea raised by the Appellant is untenable and the vehicle was insured with the Appellant only.

5. During the course of inquiry before the Claims Tribunal, the Appellant examined Anil Kumar Sharma, its Branch Manager as R2W1 who produced the cover note and the insurance policy issued on the basis of the cover note no.0744937. It was the duty of Respondent no.2 to have come forward with the original cover note which was in his power and possession and to confront the Appellant Insurance Company. Respondent no.2 further ought to have stated as to how the premium was paid by him to the Appellant Company.

6. The Claims Tribunal dealt with the issue of liability in para 18 of the impugned judgment, which is extracted hereunder:-

> *"18. Insurance company has examined one witness Shri Anil Kumar Sharma Branch Manager of the insurance company who has stated that against the cover note no 0744937 insurance policy was issued in favour of Maha*

Singh and not in favour of respondent no 1. In order to prove the same insurance company has filed the official copy of insurance policy the same is ExR2W1/A. The copy of the cover note 0744937 in favour of Maha Singh is mark C. From perusal of cover note filed by petitioner and copy of the cover note filed by the insurance company as well as from the official copy of the insurance policy ExR2W1/A it cannot be said that policy ExR2W1/A has been issued against the cover note 0744937. On the document ExR2W1/B on second page there is specific column for writing the cover note number which has been left blank in the policy. From the reading of insurance policy ExR2W1/A as well as ExR2W1/B it is not clear against which cover note said policy has been issued because number of the cover note is not mentioned anywhere in ExR2W1/A and ExR2W1/B. Further document mark C only bear the number at the right hand column as 0744937. But whether this is the number of the cover note or it is number pertaining to which document has not been proved specifically by the insurance company. The document mark C is the photocopy, even the office carbon copy of the same has not been placed on record. The person who had issued the same has not been examined by the insurance company. Therefore after considering the evidence and documents relied upon by the insurance company I am of the opinion that insurance company has failed to prove on record that vehicle in question is not insured by the insurance company. Thus insurance company being insurer and respondent no 1 being driver and owner of the offending vehicle are jointly and severally liable to make the payment of compensation to petitioner. This issue no 2 is decided accordingly."

7. The Claims Tribunal was swayed by the fact that the cover note number was left blank in the policy produced on record by Respondent no.2. The Claims Tribunal preferred not to consider

the case of the Appellant set up since the very beginning that the cover note placed on record by the Petitioner was not issued by them and that the vehicle was not insured with them at all.

8. It was a clear case of fraud being played by Respondent no.2 himself or by somebody upon whom he relied. If any agent of the Appellant was involved, it was for Respondent no.2 to have come forward and explain as to how he obtained the cover note as these facts were specially within the knowledge of Respondent no.2. Unless it was proved that an authorised agent of the Appellant Insurance Company was a party to the fraud, the Appellant could not have been made liable to pay the compensation at all.

9. Respondent no.2 has not even come forward to contest the appeal.

10. In view of the foregoing discussion, the appeal has to be allowed and it is held that the Appellant Insurance Company is not liable to pay the compensation.

11. By order dated 18.05.2007 of this Court, execution of the award against the Appellant was stayed. Since the Appellant has no liability, there is no question of execution of the judgment against it.

12. Respondent no.1 shall be entitled to enforce the judgment against Respondent no.2.

13. Statutory amount, if any, shall be refunded to the Appellant Insurance Company.

14. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 24, 2015
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