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

Judgment Pronounced on: 27.05.2015

\+ MAC.APP. 716/2012 and CM No.11673/2012 (for stay)

IFFCO TOKIO GENERAL INSURANCE CO LTD ..... Appellant
Through: Ms.Suman Bagga, Advocate

versus

RAM NARESH AND ORS ..... Respondents
Through: Mr.Navneet Goyal, Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

<u>JAYANT NATH,</u> J.

1. The present appeal is filed by the appellant Insurance Company seeking to impugn the Award dated 08.05.2012.

2. The background facts are that the claimant/respondent No.1 on 09.02.2010 was going on foot and proceeding towards the bus stand at Ashok Vihar, Delhi. He was crossing the road when a motorcycle said to be driven by its driver respondent No.2 in a rash and negligent manner hit him. Respondent No.1 fell down and sustained serious injuries.

3. Based on the evidence on record the Tribunal concluded that the accident took place as the motorcycle driven by respondent No.2 was driven in a rash and negligent manner.

4. On compensation the Tribunal awarded the following compensation:-

<u>Pecuniary damages (Special Damages)</u>

1.	Loss of Income	Rs.1,30,000/-

2.	Medical expenses	Rs.40,964/-
3.	Loss of future income etc.	Rs.12,74,000/-
4.	Special diet	Rs.20,000/-
5.	Conveyance Charges	Rs.20,000/-
6.	Future treatment medical expenses	Rs.70,000/-

<u>Non-pecuniary damages (General damages):</u>

7.	Pain, suffering & trauma and	Rs.1,00,000/-
8.	Loss of amenities, enjoyment of life, etc.	Rs.1,50,000/-
	Total	**Rs.18,04,964/-**

5. Learned counsel appearing for the appellant has strongly contended that there is no liability of the appellant inasmuch as the cover note produced by the owner/respondent No. 3 is a fake document. Hence, no insurance was got done from the appellant. There is no proof to show that the said respondent No. 3 has paid a premium. No premium receipt was placed on record. In these facts it is urged that there is no liability whatsoever on the appellant.

6. A perusal of the Award shows that the Tribunal noted the evidence of R3W1-Sh.Pradeep Sharma, Business Development Manager of the appellant. As per the evidence of the said witness R3W1, a complaint has been filed with the police on 30.11.2011 that the cover note produced by respondent No. 3 is a fake cover note. The Tribunal however concluded that even the complaint was not converted into an FIR. No charge-sheet has been filed against the owner regarding the fake cover note and there is no conviction available on record. No complaint has been filed to any other authority. Hence, the Tribunal held that the Insurance Company is

liable to pay the compensation.

7. A perusal of the police complaint filed by the appellant dated 30.11.2011 Ex.R3W1/A shows that the cover note contains no hologram of the appellant. The agent codes have wrong digits. The agency code on the present note is a seven digit code whereas cover notes issued by the appellant company have eight digit agency code.

8. R3W1 in his cross-examination admits that he has no document to show that the agency code is of eight digits and not of seven digits. He confirms that he has not brought any record to show the serial number of the cover note which were being issued in January 2010.

9. The onus to prove that the cover note was a fake cover note was on the appellant. Evidence produced by the appellant is sketchy and does not discharge the onus which is on the appellant. It may be noted that the accident took place on 09.02.2010. The claim petition was filed on 09.03.2010. The appellant have filed a written statement on 18.09.2010. After having filed the written statement, the police complaint was filed almost 14 months thereafter on 30.11.2011. It is obvious that the response of the appellant company to a grave allegation like a fake cover note is lackadaisical.

10. Further, respondent No. 3-the owner of the vehicle tendered his evidence as R2W1. He has in his affidavit by way of evidence exhibited the Insurance Policy as Ex. DW2/A. On the day of his cross-examination, the appellant company chose not to appear and were proceeded ex parte. Hence, there is no cross-examination of R2W1 on the insurance cover note which the witness has placed on record. Even no attempt was made to subsequently approach the Tribunal for setting aside the ex parte

proceedings and for recalling the said witness.

11. The casual approach of the appellant is also apparent from the fact that having filed the complaint with the SHO of Police Station, Barakhamba Road, New Delhi, the appellant have thereafter taken no steps whatsoever. In my opinion a fake cover note is a serious matter as far as the appellant is concerned inasmuch as such fake cover notes would cause invaluable loss and damage to the appellant. Any prudent insurance company would have rigorously followed up any such complaint of a fake cover note. If for some reason the police authorities did not take any action, the appellant as a prudent company should have taken other steps if necessary, filed an appropriate petition before the appropriate court to pursue the matter further.

12. It is also noteworthy that on 13.07.2012 this court had noted the said submission of the appellant and had also noted that the appellant is unable to explain any action taken in this serious matter by the appellant Insurance Company. The appellant was given one week time to file an affidavit of its commercial head with supporting documents. On 07.09.2012 this court noted that other than the filing of the complaint on 30.11.2011 no further action was taken in respect of this serious issue. This court directed the Regional Head of the appellant to remain present in person before this court on the next date of hearing. On 13.09.2012 Ms.Kavita Tanja, DGM (Marketing) of the appellant was present in court and said that other than the complaint dated 30.11.2011, no action has been taken by the appellant with regard to the alleged forgery of the cover note. No complaint was filed to the Superintendent of Police. The appellant did not approach the appropriate court of the Metropolitan

Magistrate if the police failed to take any action. This court noted that the respondents would be at liberty to urge these grounds when the matter is heard.

13. The approach of the appellant is very casual. The conduct of the appellant does not inspire confidence. Mere filing of a complaint with the police in the manner so done cannot and does not prove that the cover note placed on record by respondent No. 3 is a fake document.

14. There is no merit in the present appeal and the same is dismissed.

15. On 07.11.2012 this court had noted that despite the stay order dated 13.07.2012, pursuant to warrants of attachment issued by the Tribunal, the attached amount had been released to the claimants on 12.07.2012. However, as per the order of the Tribunal only 10% of the amount was to be released to respondent No. 1 immediately in addition to the lawyer's fees. This court directed that the remaining amount be held in a fixed deposit and should not be released in favour of the first respondent without the order of this court. The compensation amount lying in the fixed deposit be released to the claimant in the same proportion as per the directions of the Tribunal with proportionate accumulated interest.

16. Pending applications also stand disposed of. Interim orders, in any, stands vacated.

17. Statutory amount if any be released to the appellant Insurance Company.

(JAYANT NATH)
JUDGE

MAY 27, 2015
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