

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.588 OF 2016

WITH

CIVIL APPLICATION NO.1404 OF 2016

United India Insurance Company Ltd.]
Through its Divisional Manager,]
DO VI, Laxmi Road, Pune.].. Appellant

Versus

1. Smt. Sunita Sanjay Gujar,]
Age about 31 years, Occu: Household,]
2. Harshad Sanjay Gujar,]
Age about 7 years, Occu: Student,]
3. Sraddha Sanjay Gujar,]
Age about 4 years, Occu: Nil,]
Nos.2 and 3 through their Natural Guardian]
Smt. Sunita Sanjay Gujar,]
age about 31 years, Occu: Household.]
4. Jaywant Laxman Gujar,]
Age about 67 years, Occu: Retired,]
5. Laxmibai Jaywant Gujar (Deleted)]
Age about 60 years, Occu: Household,]
All r/at Chinchwade Nagar,]
Chinchwad Gaon, Pimpri Chinchwad,]

- Pune-33.]
6. Mr. Shaikh Mohammad Hanif Siddiki]
Age about Adult, Occ: Business,]
R/at 369, Nana Peth, Pune-2.]
7. Jagdish Ruban Swami,]
Age about 43 years, Occu: Service,]
R/at Gandhinagar, Dehuroad,]
Taluka Haveli, District Pune.]
8. Shri. Gopal Dhirendranak Sural,]
Age about Adult, Occu: Business,]
R/at Vikas Nagar, Dehuroad, Taluka]
Haveli, District Pune.].. Respondents

Mr. Ketan Joshi for the Appellant.

Mr. D. S. Joshi for the Respondent Nos.1 to 4.

CORAM : R.M. SAVANT, J.

DATE : 8th JULY 2016

ORAL JUDGMENT

1. Admit. Considering the challenge raised heard forthwith.

2. The above First Appeal challenges the judgment and order dated 18.04.2015 passed by the Additional Member, Motor Accident Claims Tribunal, Pune (For short "MACT"), by which order, M.A.C.P No.217 of 2006 came to be allowed and the Respondent Nos.1 to 3 herein

were awarded total compensation in the sum of Rs.11,38,000/-.

3. The facts giving rise to the filing of the above First Appeal can in brief be stated thus :-

The Respondent Nos.1 to 3 herein are the original Applicants in the said M.A.C.P. No.217 of 2006. They are the wife and children of the deceased one Sanjay Gujar who died in the accident which took place on 28.12.2004. The said Sanjay Gujar was riding a Hero Honda motorcycle bearing No. MH-12-M-4974 on 28.12.2004 at about 12.40 p.m. when he reached the Mumbai Pune road opposite to Nigdi Jakat Naka within the limits of Dehuroad Police Station, Taluka Haveli, District Pune, one Minidor Auto Rikshaw bearing No. MH-12-UA-3159 owned by the Respondent No.6 herein gave a dash to Sanjay Gujar. The Minidor Auto Rikshaw was being driven by Jagdish Swami i.e. Respondent No.7 herein and was insured with the United India Insurance Company Limited i.e. the Appellant herein. On account of the dash given to his motorcycle, the said Sanjay Gujar suffered head injury and multiple organ rupture as also multiple fractures and was taken to the Lokmanya Hospital, Nigdi for treatment. However, the said Sanjay Gujar died on 04.01.2005. In view of the accident, an FIR came to be registered for rash and negligent driving against the Respondent No.7 herein who was the opponent No.2 under

Sections 279, 337, 427 and 304-A of the IPC. The Applicants thereafter filed the instant claim petition. It was their case in the claim petition that the deceased Sanjay Gujar was 35 years of age when he died. That he was educated and was doing the business of distributon and sale of newspapers from last 10 to 12 years and was earning Rs.12,000/- from the distribution of the newspapers like Indian Express, Loksatta, Financial Express, Lokprabha and Sakal, as also he was working with Parekh Xerox Copiers, Chinchwad, Pune and was earning Rs.3500/- from them and therefore his total income was Rs.15,500/-. It was their case that the Applicants were totally dependent on the deceased and therefore their dependency comes to Rs.18,00,000/-. They claimed Rs.25000/- towards consortium etc., Rs.5000/- as funeral expenses and though their entitlement comes to Rs.19,27,003/- they have restricted their claim to Rs.10,00,000/-. The owner of the vehicle i.e. Respondent No.6 herein Shaikh Mohammad Hanif Siddiki appeared and filed his say at Exh.19 and claimed that he has sold the vehicle to one Gopal Sural. The Applicants therefore added the said Gopal Gural as Opponent No.4. However, the driver i.e. the Opponent No.2 and the Opponent No.4 have not filed their say or written statement and therefore the matter proceeded ex-parte against them.

4. In so far as the Insurance Company is concerned, in its

written statement, it is contended that the claim made by the Applicants was exorbitant. They denied that the vehicle registration No. MH-12-UA-3159 (Minidor Auto Rikshaw) was insured with them at the time of accident i.e. on 28.12.2004 at 12.40 p.m. It was their case that effective date of commencement of insurance for the purposes of making the Insurance Company liable was from 15.05 hrs. on 28.12.2004 to midnight of 27.12.2005. It was their case that since the accident took place on 28.12.2004 at about 12.40 p.m. the vehicle was not insured with the Insurance Company and therefore it was not liable to third party risk.

5. The Petition proceeded to trial. On behalf of the Applicants, the Applicant No.1 Smt. Sunita Sanjay Gujar examined herself as also examined one Prashant Kale an employee of Sakal newspaper as also Dilip Parekh who had issued the income certificate of Sanjay Gujar. On behalf of the Insurance Company Vijay Jadhav, Divisional Manager was examined who has produced the certified true copy of the insurance policy. The Applicants also produced the Police report, FIR, spot panchanama, death certificate, copy of chargesheet, hospital bills and Form AA.

6. The MACT proceeded to determine the income of the deceased Sanjay Gujar. The MACT discountenanced the claim of the Applicants that the said Sanjay Gujar was earning Rs.3500/- per month in

the absence of any cogent evidence produced through the witness Dilip Parekh. In so far as the case of the Applicants that the said Sanjay Gujar was distributing newspapers is concerned, the MACT did not accept the case of the Applicants that the said Sanjay was distributing other newspapers. The MACT however accepted the case of the Applicants that he was distributing Sakal newspapers, from which the MACT concluded that he may be earning Rs.4500/- per month. The MACT added Rs.2000/- to the said income as income from other sources and came to a conclusion that the said Sanjay Gujar was earning Rs.6500/- per month. The MACT thereafter deducting $\frac{1}{4}$ of the amount for personal expenses held that his contribution to his family comes to Rs.4875/- per month and therefore his annual contribution to the family will be Rs.58,500/- and applying the multiplier of 16 as the said Sanjay Gujar was in the age group of 31 to 35, worked out the total dependency as Rs.9,36,000/-. The MACT thereafter granted Rs.50,000/- to the Applicant No.1 for loss of consortium and Rs.50,000/- to the two children for loss of love and affection. The MACT also accepted the case of the Applicants that they had incurred expenses of Rs.97003/- and rounded off the said to Rs.97,000/- and thereby arrived at the total compensation of Rs.11,38,000/- inclusive of the no fault liability amount.

7. The MACT then ventured to consider as to whose liability it

would be to pay the compensation. The MACT examined the case of the Appellant i.e. the Insurance Company that at the time when the accident took place at 12.40 p.m. on 28.12.2004 the risk was not covered. The MACT examined the case of the Insurance Company that the policy commenced on 28.12.2004 at 3.05 p.m. and therefore the vehicle not being covered by the policy, the Insurance Company could not be made liable. In so far as the policy is concerned, the Insurance Company produced a certified true copy which was a print out from the computer through its Divisional Manager who was examined by it as its witness. In so far as the said computer print out which was certified is concerned, the vehicle number was wrongly mentioned as MH-12-UAZ-3159 instead of only "UA". The MACT therefore observed that sufficient care has not been taken whilst producing the copy of the insurance policy. Since a computer print out which was certified was produced, the MACT was of the view that the same would be admissible in evidence only if the mandate of Section 65-B of the Indian Evidence Act was to be fulfilled. In the instant case, the MACT held that the mandate of Section 65-B of the Indian Evidence Act was not fulfilled by the Insurance Company as there was no proper certification and therefore in fact there was no insurance policy placed on record by the Insurance Company and therefore the case of the Insurance Company that it could not be made liable was not accepted by

the MACT. The MACT further observed that since it is the case of the Insurance Company that the policy had commenced only at 3.05 p.m. on 28.12.2004, the owner of the vehicle i.e. Respondent No.6 herein would have to explain as to when he had paid money to the Insurance Company as to whether the money was paid before or after the incident. The MACT held that the same would be an issue between the owner and the Insurance Company and therefore the interest of the Insurance Company can be protected by passing an order of pay and recover, so that Insurance Company can catch hold of the owner of the vehicle, the vehicle can also be seized or attached and if it comes out that the owner is entirely liable then the Insurance Company can recover the money from the owner without filing any further proceeding. In the said context, the MACT relied upon the judgment of the Apex Court in the case of **Challa Upendra Rao (2004) 8 SCC 517** and **Baljit Kaur (2004) 2 SCC 1**. As indicated above, the MACT accordingly allowed the claim petition and awarded compensation in the sum of Rs.11,38,000/- which is inclusive of the no fault liability.

8. The Learned Counsel appearing on behalf of the Appellant would reiterate the case of the Appellant which was urged before the MACT, namely that since the Insurance Company had issued the policy in respect of the said Minidor Auto Rikshaw at 3.05 p.m. on 28.12.2004 after

the accident has taken place, it cannot be made liable. In support of the said contention the Learned Counsel placed reliance on the judgments of the Apex Court reported in (1997) 1 SCC 66 in the matter of National Insurance Co. Ltd. Vs. Jikubhai Nathuji Dabhi and others and (1990) 2 SCC 680 in the matter of New India Assurance Co. Ltd. Vs. Ram Dayal and others. The Learned Counsel would next contend that in spite of notice being issued to the owner of the vehicle on 14.11.2014 to produce the original documents including the insurance policy, there was no response from the owner till the end and the said act therefore shows the intention of the owner to defraud the Insurance Company.

9. The Learned Counsel would next contend that since the policy was a certified print out which was produced, there was no requirement to complying with Section 65-B of the Indian Evidence Act relating to the proof of the electronic record. The Learned Counsel sought to distinguish between the document which is physically issued and produced in a electronic form.

10. The Learned Counsel Mr. D. S. Joshi appearing on behalf of the Respondent Nos.1 to 4 i.e. Claimants would support the impugned Award passed by the MACT, Pune. It is his submission that the evidence by way of computer print out of the policy has to satisfy the mandate of

Section 65-B of the Evidence Act and thereafter only it can be admissible in evidence. It is his submission that since the mandate of Section 65-B has not been fulfilled, it is not open for the Insurance Company to contend that the insurance policy was not in force at the time when the accident has taken place. In support of the said contention, the Learned Counsel sought to place reliance on the judgment of the Apex Court reported in (2014) 10 SCC 473 in the matter of Anvar P. V. Vs. P. K. Basheer and others.

11. Having heard the Learned Counsel for the parties, I have considered the rival contentions.

12. Though on the part of the Insurance Company a defence was taken that at the time when the accident taken place at around 12.40 p.m. on 28.12.2004 there was no policy in existence as the risk cover started at 3.05 p.m. on the said day. In support of which the Appellant Insurance Company sought to produce a computer print out of the insurance policy certified by the Managing Director of the Appellant. In so far as the computer print out is concerned, it is required to be noted that the registration number of the vehicle mentioned therein is not the same as the registration number of the vehicle involved in the accident, as in the said computer print out the vehicle number mentioned is MH-12-UAZ-

3159 instead of MH-12-UA-3159. The MACT was therefore right in observing that even though the said computer print out was produced, sufficient care has not been taken by the Insurance Company whilst producing the said computer print out. Significantly, though it is the case of the Insurance Company that a office copy is maintained, the same was not produced.

13. The question that arises is whether in respect of the said computer print out, the mandate of Section 65-B was required to be followed. In so far as the Section 65-B is concerned, it applies to evidence which is produced by way of electronic record which is printed on a paper stored, recorded or copied in optical or magnetic media produced by a computer. There can be no gain saying of the fact that a computer print out is the information which is printed from the information which is stored in the computer. It is in view thereof that safeguards have been provided by way of Section 65-B(2) and 65-B(4) of the Evidence Act, namely that a document produced by way of electronic device is admissible in evidence only if it satisfies the pre-requisites mentioned in Section 65-B(2) and 65-B(4) of the Evidence Act. In the instant case, as indicated above, the said print out is only a copy certified by the Managing Director and is not certified in the manner required by Section 65-B(4) of the Evidence Act. In the said context, paragraphs 14 and 15 of the

judgment in *Anvar's* case (*supra*) are material and are reproduced hereinunder.

“14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to satisfy secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act :

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or

breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.”

14. Since the requirement of Section 65-B(2) and (4) have not been satisfied in the instant case, the computer print out of the insurance policy was inadmissible in evidence and therefore the case of the Insurance Company that the risk was not covered at the time when the accident took place cannot be accepted. The judgments in *National*

Insurance Co. Ltd.'s case (*supra*) and *New India Assurance Co. Ltd.*'s case (*supra*) would therefore not further the case of the Insurance Company. The Insurance Company is therefore liable to third party risk and is accordingly liable for the payment of compensation. However, by the impugned judgment and order the Insurance Company has been first directed to pay and then recover from the owner of the vehicle and it is observed by the Trial Court that it is an issue between the Insurance Company and owner of the vehicle and that the Insurance Company can recover money from the owner without filing any further proceedings as held by the Apex Court in *Challa Upendra Rao's* case (*supra*) and *Baljit Kaur's* case (*supra*). In my view, the instant order in so far as pay and recover is concerned, cannot be faulted with. The First Appeal is therefore bereft of any merit, the same is accordingly dismissed.

15. In view of the dismissal of the First Appeal, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]