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

Date of Decision: 20th January, 2016

+ **MAC.APP. 99/2006 & CM APPL. 2219-2220/2006**

THE NEW INDIA ASSURANCE CO.LTD Appellant

Through: Mr. P. K. Seth, Adv.

versus

R.K.ARORA & ORS. Respondents

Through: Mr. S. N. Parashar, Adv. for Ms.
Shaili Thakur, Adv. for R-1.

AND

+ **MAC.APP. 353/2006 & CM APPL. 5647-5648/2006**

R.K.ARORA Appellant

Through: Mr. S. N. Parashar, Adv. for Ms.
Shaili Thakur, Adv. for R-1.

versus

RINKU AGGARWAL & ORS. Respondents

Through: Mr. P. K. Seth, Adv. for
respondent/Insurance company.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Rakesh Kumar Arora s/o T. R. Arora (the appellant in MAC APP. No. 353/2006) had suffered injuries in a motor vehicular accident on 26.07.2000 in the area of Anupam Apartments, East Arjun Nagar, Delhi involving a Maruti car bearing registration no.DL-6CE-2181 ("the offending vehicle"). He took out claim petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred

to as “MV Act”) on 09.01.2001, seeking compensation in the sum of Rs.15 lacs, *inter-alia*, claiming that he had suffered permanent disability. He impleaded Rinku Aggarwal in the array of parties (first respondent in MAC APP. No.353/2006) alleging that he was driver of the offending vehicle at the time of the accident. He also impleaded Purshottam Lal (second respondent in MAC APP. No.353/2006) in the array of parties stating that he was registered owner of the offending vehicle. The New India Assurance Company, 415, Main Mathura Road, New Delhi (appellant in MAC APP. No.99/2006) was shown in the array of parties (as respondent no.3) with the allegations that the offending vehicle was insured with it. The claim petition, registered as suit no.251/2004, was inquired into and decided by the motor accident claims tribunal (“the tribunal”) by judgment dated 28.10.2005 whereby compensation in the sum of Rs.4,35,000/- was granted in favour of the appellant Rakesh Kumar Arora (hereinafter referred to as “the claimant”) with interest payable @ 7% from the date of filing of the claim petition (09.01.2001) till realization. The driver (Rinku Aggarwal) and owner (Purshottam Lal) were held liable to pay the compensation amount with the finding that they were the principal tortfeasor and the person vicariously liable respectively. The appellant/insurance company was directed to pay the compensation amount holding it statutorily and contractually liable.

2. Both the claimant and the insurance company, feeling aggrieved with the judgment and award, have come up to this court with their respective appeals under Section 173 of MV Act. While the claimant, by his appeal (MACA no.353/2006), claimed enhancement on various grounds, the insurance company, by its appeal (MACA no.99/2006), has

questioned the findings recorded by the tribunal in the impugned judgment rejecting its contention that it was not liable since the cover note relied upon to claim insurance policy, was forged and fabricated document.

3. Given the aforementioned facts and circumstances, it is proper that the appeal of the claimant is taken up first.

4. The compensation in the sum of Rs.4,35,000/- had been awarded to the claimants, break up of which is, Rs.2,70,000/- granted towards future income loss on account of permanent disability factor; Rs.50,000/- awarded as lump sum compensation for loss on account of claimant having been constrained to be on leave of absence from his official duty for a period of 13 months (w.e.f 27.07.2000 to 04.09.2001); attendant charges assessed at Rs.15,000/-; compensation on account of medical treatment, conveyance and special diet worked out as composite Rs.50,000/-; and, non-pecuniary damages on account of pain and agony on one hand and the loss of enjoyment of life amenities on the other compensated at Rs.25,000/- each.

5. In his appeal, the claimant also claimed enhancement of award for loss of future income on the ground that the disability has been under-assessed (at 10%). But, at the hearing, learned counsel representing the claimant conceded that the award of compensation was just and proper and, therefore, the appeal to that extent is not pressed.

6. The grievance of the claimant on account of compensation towards loss on account of leave is also based on the claim that the income has been wrongly computed and restricted at Rs.15,000/- per

month. It is the claim of the appellant (claimant) that he was working as a Manager (Human Resources) in M/s Ircon International Limited (a Government of India undertaking) at the relevant point of time and his salary, as on 26.07.2000, duly certified on 04.10.2001 by certificate (Ex. PW3/B), was to the tune of Rs.21,500/- per month. It is argued that the salary certificate has not been properly construed as the amount of Rs.6080/- towards leave has been wrongly discounted. On perusal of the said document, this court finds that the expression "leave" is nowhere explained. There is no allowance called "leave" generally known in the service rules. In these circumstances, in the opinion of this court, the tribunal has correctly appreciated the evidence led and has computed the salary and allowances payable at the relevant point of time at Rs.15,000/- per month.

7. The award of compensation towards loss on account of leave, in view of this court, was not properly computed by the tribunal. The leave accumulated in the account of an employee is a privilege with monetary value. Leave is available to an employee for use as per personal needs as and when the occasion arises for it to be availed. The claimant in the case at hand was constrained to take leave for a period of 13 months not for any personal reason but on account of the fact that he had been rendered immobile due to the injuries suffered in an accident. The employee may have received the salary for the period of leave but that is no solace for him as his leave account, nonetheless, stands eroded. Leave salary is a privilege available to him under the normal service rules. Thus, the value of the period of leave amounts to a loss suffered by him, for which he needs to be duly compensated.

8. In the above facts and circumstances, the award on account of loss occurring on account of leave for a period of 13 months should have been compensated by directing payment of Rs.1,95,000/- on that score. The lump sum amount of Rs.50,000/- being deficient, the award on that score is modified and the total compensation will need to be enhanced by Rs.1,45,000/-.

9. This court does not find any substance in the grievances about the award on the other heads including attendant charges, medical treatment, conveyance, special diet, pain and agony, loss of enjoyment of amenities of life. Though the claimant led some evidence about the expenditure for engaging driver-cum-attendant, the tribunal was not satisfied, and rightly so, as there was no need for such attendant to be engaged for a period of 2½ years. In the facts and circumstances, the award under the said other heads is upheld.

10. In the result, compensation payable to the claimant is enhanced from Rs.4,35,000/- to Rs.5,80,000/- which shall carry interest as ordered by the tribunal.

11. Coming to the appeal of the insurance company, it is noted that the driver, upon being served with the process issued by the tribunal, appeared and submitted two written statements, one on 09.11.2001 and the other on 30.09.2003, denying involvement of the motor vehicle driven by him in the accident. The pleadings submitted by the driver in the said written statements are conspicuously silent about the state of insurance cover of the offending vehicle. The owner, inspite of notice, chose to suffer the proceedings before the tribunal *ex-parte*. The insurance company, on the other hand, submitted that the policy

no.31/323101/24532, copy of the cover note whereof had been received by it with the notice on the petition from the tribunal was actually issued in the name of Satish Kumar for the period from 03.08.1999 to 02.08.2000 in respect of another vehicle no.DL-3CK-8281. The insurance company took a specific stand that the offending vehicle involved in the claim petition was never insured with it for the period in question. Thus, the insurance company denied its liability to pay any compensation on the claim petition submitted by the claimant.

12. No evidence was led by the claimant to prove the insurance cover note. The driver had not made any pleadings about the insurance cover of the offending vehicle except bald assertion that the offending vehicle was insured with the appellant/insurer without giving particulars of the insurance policy. The driver did not step into the witness box to prove relevant facts in such regard. The insurance company, in contrast, examined Mr. D. K. Mahajan, Branch Manager (R3W1) to prove facts based on its internal inquiries into the forgery.

13. The pleadings of the parties, the contentions of the insurance company, evidence led thereupon and the inferences drawn therefrom have been set out by the tribunal in the impugned judgment in the following manner.

“ The Ld. Counsel for R3 argued that the offending vehicle was not insured with the company. The Ld. Counsel further contended that the certificate No.39246 dated 6.8.99, as per which offending vehicle was insured up to 5.8.2000 was fake document, fabricated by Sh. P.S. Bisht, employee of the company, thereby, it cannot be considered and no liability to pay compensation can be fastened upon the Company. In support of

its contentions R3 examined one witness i.e. R3W1 Sh. D.K. Mahajan, Branch Manager of the company.

Sh. D. K. Mahajan deposed that as per their record vehicle No.DL-3CK-8281 on the name of Satish Kumar was insured from 5.8.99 to 4.8.2000. The certificate No.39246 dated 6.8.99 valid upto 5.8.00 on the name of Purushottam Lal was never issued by their Branch for the vehicle No. DL-6CE-2181. This certificate is a fake document and fabricated by their employee Sh. P.S. Bisht who is under suspension and charge sheet has been served to him. He filed carbon copy of the policy No.31/323101/24532 as Ex.PW3/A and photocopy of the certificate No.39246 as Ex.RW3/B. R3W1 also filed the memorandum of the charges framed against Sh. P.S. Bisht as Ex.RW3/C.

During cross by petitioner, R3W1 Sh. D.K. Mahajan stated that at the time of issuance of cover note Ex.RW3/B Sh. P.S. Bisht was Asstt and was posted in higher scale and was not having any right to take premium from the insured. R3W1 further stated that document Ex.RW3/B is related to their company but was not related to their branch. They came to know about the fabrication of this cover note only when they received the notice from the court. R3W1 further stated that prior to detection of this fabrication, there were other similar allegations against Sh. P.S. Bisht but till the receipt of notice of this court, no enquiry was initiated against him. R3W1 further stated that another such incident pertains to July 2001 of the same officer. No immediate action was taken against Sh. P.S. Bisht in this regard and he was put under suspension in May 2003. R3W1 further stated that as per record there are allegations of misconduct against Sh. P.S. Bisht right from 1999 to 2001 but no action was taken against him till the issuance of chargesheet on 23.12.03. R3W1 further stated during cross that no FIR has been lodged either against insured or Sh. P.S. Bisht. R3W1 stated that till date no enquiry officer has been appointed despite the fact that no reply has been received from Sh. P. S. Bisht about the memorandum. It is for disciplinary authority to show that whether they wish to take any action against Sh. P.S. Bisht or not. R3W1 further stated that Sh. P.S. Bisht is still under the employment of the company and Sh. P.S. Bisht has accepted his writing on the cover note.

The Ld. Counsel for the petitioner contended that the cover note Ex.RW3/B for the offending vehicle, covering date of accident, is valid document covering risk qua third party vis-a-vis the offending vehicle. The Ld. Counsel further contended that insurance company is liable to pay compensation to the petitioner on behalf of the insured.

Ex.PW3/C is the memorandum of charges framed against Sh. P.S. Bisht. As per this record there are charges against said Sh. P.S. Bisht that while working as Assistant at Badarpur Branch, he fraudulently with ulterior motive and malafide intention issued the insurance certificate/policy in respect of vehicle No.DL-6CE-2181. R3W1 Sh. D.K. Mahajan, Branch Manager of R3 admitted during his cross-examination that against this chargesheet no enquiry officer has been appointed till date despite the fact that no reply was received from Sh. P.S. Bisht about this memorandum of chargesheet.

R3 has taken the plea that Sh. P.S. Bisht was working as an Asstt and he was posted in higher scale and was not having any right to take premium from the insured. Though, it is nowhere specifically stated by R3W1 that no premium against cover notice Ex.RW3/B was received by the company but it is apparent from the facts and circumstances on record that no premium was received by R3 against the said cover note.

The proposition which emerges from the facts discussed above is that Sh. P.S. Bisht while working as Asstt. with R3 issued the cover note Ex.RW3/B for the offending vehicle i.e. DL-6CE-2181 fraudulently, without any authority or sanction of the company. The other important question to be considered is whether Mr. P.S. Bisht issued this cover notice Ex.RW3/B in collusion with the insured or Sh. P.S. Bisht cheated the insured and received the premium amount against said cover note from the insured and misappropriated the said amount. The defence taken by R3 is totally silent on this aspect.

If an official of the company is issuing a cover note after receiving the premium, the insured has no reason to doubt the

authority of the said official. Whether said official is exceeding his authority or acting malafidely, it is not possible for a person to judge at that time. Even the conduct of R3 is not understandable, as till date no enquiry officer has been appointed against the memorandum of chargesheet against Sh. P.S. Bisht or till date Sh. P.S. Bisht being under suspension, is continuing to be the employee of the company.

Whether Sh. P.S. Bisht cheated the insured as well as the company or whether Sh. P.S. Bisht in collusion with insured cheated the insurance company, in either of these two instances the petitioner who is a third party cannot be allowed to suffer. In view of these circumstances, R3 is directed to deposit the award amount within one month from today by way of crossed cheque with this Tribunal.

Regarding giving recovery rights to R3 against the insured, since the defence taken by R3 is not touching u/s. 149(2) of the M.V. Act, thereby, the question regarding the recovery rights to R3 does not arise at all. However, in view of the principles of equity if insured/owner i.e. R2 acted in collusion with Sh. P.S. Bisht for cheating R3, the insured Sh. Purushottam Lal cannot be allowed to enjoy the dividend of his deceit. Since, as already discussed till date R3 has failed to conclude its enquiry against Sh. P.S. Bisht which may have thrown light on the role of Sh. Purushottam Lal, thereby even on the basis of principles of equity no recovery rights can be given to R3 against R2.

I thereby decide this issue in favour of the petitioner and against the respondents.”

14. The grievance of the insurance company is that it has been held liable even though it had proved, to the satisfaction of the tribunal, that the insurance cover note submitted with the claim petition by the claimant was a forged and fabricated document. The submission of the claimant, on the other hand, is that he had received the copy of the cover note in question from the investigating police as part of the documents

relating to the chargesheet submitted on conclusion of the corresponding criminal case registered and investigated by the said agency and, therefore, he cannot be held answerable and that against the backdrop the tribunal has taken an appropriate view.

15. On close scrutiny, this court finds that the approach of the tribunal was wholly erroneous. By irrefutable evidence presented during inquiry, it had been proved that the cover note (Ex.RW3/B) was a forged and fabricated document. It was shown on the basis of cogent evidence led that the insurance policy to which the said cover note purports to relate had actually been issued in the name of a third person in respect of a different vehicle. The responsibility to prove that the cover note of insurance is genuine and valid, obtained against premium duly paid, was that of the owner of the vehicle. The said party/respondent clearly avoided joining the issue, or the inquiry before the tribunal, and instead opted to suffer the proceedings *ex-parte*. It is pertinent to note that the said party, inspite of service even in the proceedings on the appeal before this court, has chosen not to appear. The same is the position of the driver in the appeal before this court.

16. Assumably, the claimant would have procured the copy of the cover note on which he relied (to claim the liability of the insurance company) from either the owner or from the investigating police. Given the pleadings of the insurance company, it was necessary for him (claimant) to prove the source of procurement of the said document. Noticeably, he has avoided making any deposition to clarify as to how he had come across the document which is found to be forged and fabricated. He has, thus, not come clean. The possibility of he himself

being in league with the persons who would have forged the document cannot be ruled out. At the very least, this aspect required some inquiry before he could be allowed to take advantage of the forgery.

17. It is really strange that without the owner having taken such position, the tribunal has chosen to give a clean chit to him by observing that he would have had no reason to doubt the genuineness of the document, once an official of a company had issued the cover note “after receiving the premium”. There was no material before the tribunal on which it could be inferred that the insurance company, or one of its employees, had actually received premium for issuing a cover note, or insurance policy, for the period in question in respect of the offending vehicle. The finding recorded on basis of such unfounded assumption is perverse and cannot be upheld.

18. It does appear that the disciplinary action against Mr. P.S. Bisht, Assistant of the insurance company under whose purported signatures the cover note in question appears to have come into existence was rather slow. During the inquiry before the tribunal, the insurance company proved some material indicating that the said employee had been proceeded against under disciplinary rules. Till the time the proceedings before the tribunal were concluded, the disciplinary inquiry was inchoate. Pursuant to the directions of this court, however, the insurance company has brought on record document dated 13.10.2006 indicating that the disciplinary action stood concluded in due course and Mr. P.S. Bisht having been found guilty of misconduct, penalty of removal from service was imposed against him.

19. In the considered view of this court, once the tribunal had been shown by irrefutable and un rebutted evidence that the cover note was a forged and fabricated document, there was no occasion for appellant/insurance company to be held statutorily or contractually liable to pay the compensation for, or on behalf or in lieu of, the owner of the offending vehicle. The insurance company is custodian of public money and trust and cannot be called upon to indemnify those with whom it has no contractual liability. The money held by the insurance company cannot be made available for “loot” at the hands of those acting dishonestly or fraudulently; particularly when there is no proof of privity of contact. The manner in which the forged document was presented, and the tribunal agreed to act upon it, to fasten the liability unreasonably and unfairly on the insurance company on its basis, giving undue benefit to the registered owner of the offending vehicle, if not also to the claimant whose complicity in the use of the said document is also a matter requiring probe, is a cause for concern. If the view taken by the tribunal were to be accepted as appropriate approach, it would set a very dangerous trend. The claim petitions based on forged insurance papers would have to be honoured, without demur, and dishonest persons who fail to abide by the statutory obligation of taking insurance cover of the motor vehicle, they own would get illegitimately indemnified just by not appearing before the claims tribunal. The judicial forum cannot countenance this kind of fraud and dishonesty.

20. Forgery of an insurance policy or cover note – indeed, a document falling within the definition of “valuable security” - and its use in the judicial proceedings before the tribunal to cheat the insurance company, and the tribunal, are offences punishable under the penal law.

The forgery had come to the notice of the insurance company immediately after the copy of the claim petition and connected papers had been served on it by the tribunal. The evidence adduced has shown that the insurance company made internal inquiry and detected forgery as also its official who had been complicit in the offences thereby constituted. Since the crimes *prima facie* committed by these acts are cognizable offences, aside from disciplinary action, report to the police for appropriate action under the criminal law was also warranted. It is strange that the authorities that be, controlling the affairs of the insurance company, did not rise to the occasion to take any such action to bring about deterrence or for setting its house in order. The sole action of imposition of penalty of removal from service of the official found responsible seems to be an effort to downplay the gravity of the matter, also for the reason that this would not make good the wrongful loss consequentially suffered by the insurance company.

21. As per the provision contained in Section 169(2) of the MV Act, the tribunal is a civil court for purposes of Section 195 and chapter XXVI of the Code of Criminal Procedure, 1973. It was expedient, and in the interest of justice, on the facts and in circumstances of this case that the tribunal initiated an appropriate inquiry under the provisions of Section 195 read with Section 340 of the Code of Criminal Procedure, 1973 for appropriate action under the criminal law to bring the offenders to book.

22. For the foregoing reasons, and in the circumstances, the appeal (MACA no.353/2006) of the claimant is partly allowed. The compensation awarded in his favour is enhanced from Rs.4,35,000/- to

Rs.5,80,000/- (Rupees Five Lacs Eighty Thousand) with interest as levied by the tribunal in the impugned judgment/award. The driver and owner (first and second respondent in the said appeal) are held jointly and severally liable to pay the said compensation to the claimant. They are directed to do so within 30 days of today.

23. The appeal (MACA no.99/2006) of the insurance company is allowed. The impugned judgment, to the extent it fastened liability on the insurance company to pay compensation to the claimant, is set aside.

24. The learned counsel for the insurance company informs that since there was no stay, money had been released to the claimant in terms of the impugned award. Given the facts and circumstances of the case, and the time that has elapsed, it will not be fair, pending further probe (as is being hereby ordered), to call upon the claimant to return the money received from the insurance company. Instead, the proper course is to give liberty to the insurance company to take out appropriate proceedings before tribunal for recovery of the money paid in this case to the claimant from the owner of the vehicle.

25. In terms of the modified award, the claimant is entitled to receive Rs.1,45,000/- (One Lac Forty Five Thousand) over and above what has already been received as compensation by enforcement of the impugned award. Since the insurance company has been held not liable, the claimant is given liberty to take out appropriate execution proceedings before the tribunal for recovery of the said additional compensation from the owner or driver, who are jointly and severally liable.

26. The matter cannot be given a quietus only with the above directions or observations. It requires further probe. It is essential that action under criminal law is initiated so that unscrupulous elements indulging in such corrupt practices or pollute the streams of justice stand discouraged and deterred. As observed above, it was expedient, and in the interests of justice, that the person(s) responsible for the forgery and use of the forged document for cheating was (or were) held accountable under the penal law. For such purposes, the matter is remitted to the tribunal for appropriate inquiry and further necessary action, under the provisions contained in Section 195 read with Section 340 of the Code of Criminal Procedure, 1973. Needless to add, given the fact that the matter is quite old, the tribunal is advised to proceed with the inquiry with all necessary expedition and conclude the same within three months of the date indicated hereinbelow.

27. The parties are directed to appear before the tribunal for the aforesaid inquiry and further proceedings on 15th February, 2016.

28. The statutory deposit, if made, shall be refunded to the insurance company.

29. The appeals stand disposed of with above observations and directions.

30. A copy of this order be given *dasti* to all parties, as requested.

**R.K. GAUBA
(JUDGE)**

JANUARY 20, 2016/ssc