$~R-74 & 74-A

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

Date of Decision: 10th May, 2016

\+ **MAC.APP. 551/2007**

UNITED INDIA INSURANCE CO. LTD. ..... Appellant

Through: Mr. A. K. De & Mr. Anjan Sinha, Advs.

versus

DINESH KUMAR AND ORS. ..... Respondents

Through: Mr. O. P. Mannie, Adv. for R-1.

AND

\+ **MAC.APP. 387/2016**

DINESH KUMAR AND ORS. ..... Appellants

Through: Mr. O. P. Mannie, Adv.

versus

UNITED INDIA INSURANCE CO. LTD. ..... Respondent

Through: Mr. A. K. De & Mr. Anjan Sinha, Advs.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Dinesh Kumar (the appellant in MAC appeal no.387/2016) suffered injuries in a motor vehicular accident that occurred on the night intervening

1/2.11.2001, statedly on account of negligent driving of tourist taxi bearing registration no.HR-38FT-5561 (the offending vehicle). An accident claim case (suit no.250/2006) was instituted by him on 20.08.2002 seeking compensation under Section 166 of the Motor Vehicles Act, 1988 (the MV Act). In the said case, United India Insurance Company Ltd. (the appellant in MAC appeal no.551/2007) was impleaded as third respondent in addition to Vinod Kumar and Meena Sharma (second and third respondents in MAC appeal no.551/2007) as party respondents, on the averments that the offending vehicle was driven by the said Vinod Kumar, it being owned by said Meena Sharma and insured against third party risk for the period in question with the said insurance company. The case was contested by all the three respondents, the driver Vinod Kumar pleading that there was no negligence on his part, the owner Meena Sharma taking the position that no accident had been caused by the offending vehicle and the insurance company pleading that there was no insurance policy issued by it in respect of the offending vehicle.

2. At the hearing, the photocopy of cover note purporting to have been issued by the said insurance company was submitted on record as document (Ex.PW1/9), affirmed by the claimant during his testimony as PW1. It may be added here that Dinesh Kumar, husband of the owner (Meena Sharma) also appeared as a witness (R2W1) during inquiry and relied upon the said document (Ex.PW1/9) claiming that he had paid premium in the sum of Rs.11850/- in cash to one Mr. Kapoor who had issued the said document (cover note) to him. The insurance company, on the other hand, led evidence by examining, *inter-alia*, M. K. Kelkar (R3W1), the Assistant

Manager and Amarjeet Singh (R3W2), Assistant Manager to prove its case that cover note bearing the same number (145071) as appears on the document (Ex.PW1/9) tendered in evidence by the claimant and owner had actually been issued in respect of a newly purchased vehicle maruti van in favour of one Javedi, premium in the sum of ₹7785/- having been realized against cheque no.223526.

3. After inquiry, the tribunal upheld the case of the claimant about injuries having been suffered due to negligent driving of the offending vehicle. It awarded compensation in the sum of ₹5,80,799/- with interest at the rate of 7.5% per annum from the date of filing of the petition in favour of the claimant. The contention of the insurance company, about the document (Ex.PW1/9) to be a fabricated cover note, was rejected and the liability to satisfy the award was fastened upon it.

4. The insurance company, by its appeal (MAC appeal no.551/2007), questions the finding recorded by the tribunal in respect of the document (Ex.PW1/9). Its contention is that the owner of the offending vehicle who was primarily relying on it to seek to be indemnified, has failed to prove that he had taken out the insurance cover against premium properly paid. It is pointed that document (Ex.PW1/9) is only a photocopy and inspite of being called upon to do so, the owner would not produce the original cover note nor give any valid or justifiable explanation for such omission.

5. *Per contra*, the learned counsel for the claimant argued that the evidence of R3W2, who is stated to have issued the cover note bearing the same serial number vide document (Ex.R3W1/1) had admitted in the

concluding part of his testimony that the document (Ex.PW1/9) bears his signature alongwith an admission earlier made about the said document bearing photo impression of his rubber stamp. On this, the contention of the claimant is that the matter has been properly appreciated by the tribunal to reject the plea of fabrication and, thus, the insurance company cannot escape from its liability. The claimant's counsel on the other hand, submits that if the evidence recorded (Ex.PW1/9) is not believed and it is found that there was no valid insurance policy in respect of the offending vehicle, given the above admission of R3W1 & R3W2, the insurance company may be granted recovery rights but must be called upon to satisfy the claim of the third party.

6. During the pendency of the appeal of the insurance company, the claimant submitted cross-objections (CM no.239/2008), now pressed to seek enhancement of interest which had been treated as an independent appeal (MAC appeal no.387/2016).

7. Inspite of notice, the driver and owner of the offending vehicle have chosen not to appear at the hearing on the appeals.

8. Having heard both sides and having gone through the tribunal's record, this court finds merit in the appeal of the insurance company. The document Ex.PW1/9 cannot be believed *per se*. It is a photocopy of what purports to be a cover note original whereof was admitted to be in the possession of the owner but never produced. No valid or justifiable explanation has been given for such omission in absence of the original. The photocopy cannot be treated as good proof. Even otherwise, this document purportedly shows that the premium was received against it in the sum of

₹11335/- by cheque no.223526. R2W1 while seeking to affirm the case of the owner instead stated that the premium in the sum of ₹11850/- had been paid in cash. He did not produce any cash receipt for such payment. Having regard to the evidence of R3W1 & R3W2, it is clear that the copy of the cover note which was actually issued in the shape of Ex.R3W1/1 has been manipulated so as to create another in the form of document (Ex.PW1/9) purporting to be a cover note in respect of the offending vehicle. The said cover note not having been proved in accordance with law, there is no reason why the insurance company should bear the liability to indemnify.

9. While the above is position concerning the right of the owner of the offending vehicle to be indemnified, the third party interests need to be protected. Since the insurance company cannot deny some negligence on its part in that cover note taking the shape of document (Ex.PW1/9) came into existence and is admitted to be bearing photo impression of signatures and rubber stamp of its assistant manager, justice demands that it must satisfy the claim of third party but, at the same time, is able to recover the liability thus unduly incurred from the parties in question i.e. the owner and driver of the offending vehicle.

10. This court finds merit in the contention of the claimant about rate of interest being inadequate. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

11. By order dated 04.10.2007 (in MAC appeal no.551/2007), the insurance company had been directed to deposit the awarded amount with the Registrar General within the period specified. Fifty percent (50%) of the said amount was released by order dated 25.08.2008 to the claimant, the balance having been transferred to the tribunal by a later order dated 17.04.2009. The tribunal had been directed to keep the said amount in fixed deposit in the name of the claimant for a period of six years from which liberty to draw periodical interest was granted. The said amount held in fixed deposit shall also now be released to the claimant.

12. The insurance company is granted recovery rights against the owner and driver of the offending vehicle for which it may take out appropriate proceedings before the tribunal. The claimant is given liberty to recover the amount on account of increased rate of interest from the owner and driver by appropriate proceedings before the tribunal.

13. The statutory amount, if deposited by the insurer, shall be refunded.

14. Both these appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 10, 2016
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