NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

MAC No. 294 of 2007

The Oriental Insurance Co.Ltd. through divisional Manager, The Oriental Insurance Co. Ltd. near to Kuchary Chowk, Raipur (CG).

-----Appellant.

Versus

1. Narayan Das Manikpuri, aged about 35 years, S/o late Mehattar Das Manikpuri, permanent address, Village & Post Dongargarh, Thana Dongargarh, Distt. Rajnandgaon (CG). Present address-Lodhipara, Thana Pandri, Raipur.
2. Gulab Nirmalkar S/o Kuledi Nirmalkar, address Khuteri Thana Gunderdehi, Distt. Durg (CG).
3. Bhekhu Das Dewangan S/o Gopal Ram Dewangan, R/o Village & Post Arjunda, Distt. Durg (CG).

For Appellant	:	Shri Sudhir Agrawal, Advocate.
For respondent No.1	:	Shri Amiykant Tiwari, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

31.10.2017.

1. The present is an appeal filed by the insurance company under Section 173 of the Motor Vehicles Act (for short, the MV Act) against the award dated 21.12.2006 passed by the 2nd Additional Motor Accident Claims Tribunal, Raipur (for short, the Tribunal) in Claim Case No.62 of 2006. Vide the said impugned award, the Tribunal in a claim application filed under Section 166 of the MV Act in an injury case has awarded a compensation of Rs.2,18,790/- to the claimant along with interest @ 7.5 percent per annum. The liability of payment of compensation has been fastened upon the appellant-insurance company.

2. The challenge in the present appeal is to the liability which has been fastened upon the insurance company. The contention of the appellant is that it is a case where the owner of the vehicle had played fraud with the Tribunal while contesting the case inasmuch as he has produced the fabricated document to show that the vehicle involved in the accident i.e. Tata Sumo bearing registration No.MH-20-E-9923 was duly insured with the present appellant. He submits that it is a case where the policy which is infact relied upon by the owner of the offending vehicle i.e. respondent No.3 was infact a different Tata Sumo bearing registration No.MH-31-H-9923 and which the respondent No.3 have fraudulently got correction done on the policy and have got fabricated seal affixed on it to show it to be a genuine correction made in the policy so far as the vehicle number is concerned. Thus, the liability part be shifted on the respondent No.3 instead of the appellant.
3. It was further contended that it is a case where the insurance company had produced the proposal sheet as also the original policy which would clearly reflect that the policy issued was in respect of Tata Sumo No.MH-31-H-9923. The proposal form also bears the signature of the owner of the vehicle-Bhekhu Das and the policy issued was thus only in respect of vehicle No. MH-31-H-9923. Thus, for all these reasons, the liability should be shifted upon the owner i.e. respondent No.3 from the insurance company.
4. Counsel for the respondent No.1-claimant referring to the evidence of Bhekhu Das which has come on record submits that it is a case where

there seems to be an error which is crept in while the policy was being prepared inasmuch as the number of the vehicle involved in the accident is MH-20-E-9923 and the policy issued by the appellant was MH-31-H-9923. According to claimant there was no occasion for the respondent No.3 to have got the policy issued of a vehicle of which he was not a registered owner i.e. Tata Sumo No.MH-31-H-9923. He further submits that it is a case where only when the vehicle met with an accident and in the claim case the respondent No.3 came to know the fact that vehicle insured was not the vehicle belonging to the respondent No.3 and they got the correction done. Thus, prayed for rejection of the appeal.

5. According to claimant the award was passed on 21.11.2006 and till date for about 11 years he has not been able to get the compensation awarded in his favour due to the interim order in favour of the insurance company and for this reason also he prayed for rejection of the appeal.

6. Having heard the contentions on either side and on perusal of records what is clearly reflected is the date of accident i.e. 14.04.2004 wherein the claimant Narayan Das met with an accident when he was travelling on motorcycle was hit by Tata Sumo belonging to the respondent No.3 and driven by respondent No.2. Ex. D/5 is the insurance policy which has been issued in the name of respondent No.3-Bhekhu Das Dewangan. The vehicle referred to in the said policy is a Tata Sumo bearing registration No.MP-31-H-9923. The contention of the appellant that it is a case of fake policy being used by the owner does not seem

to be plausible for the reason that this court does not find one good reason for Bhekhu Das to take a policy in respect of vehicle of which he was not owner. Another fact which cannot be brushed aside is the fact that the digital number of the vehicle of the respondent No.3 was the same i.e. 9923 and that except for the first portion of the registration of the vehicle i.e. MH-20-E has got entered as MH-31-H. The rest of the details seems to be proper, legal and justified. Further, from the records it reflects that perusal of Ex. D/5 which is an admitted fact from all side would show that the engine number and chassis number has been left blank which was required to be filled up by the officers of the insurance company.

7. The reason which creeps in the mind of the court is, as to why the respondent No.3 would get the vehicle which was not owned by him, be insured from the appellant-insurance company. Thus, the safest inference which can be drawn is that there appears to have some clerical error crept in while registration number of the vehicle was being entered into. The reason for arriving this finding is on the ground that execution of Ex. D/5 by the insurance policy, is not in dispute by the appellant-insurance company. There could be an error or irregularity on the part of the respondent No.3 in getting the rectification or correction done, but this by itself would not absolve the insurance company of its liability totally when they have accepted the premium from the respondent No.3 in respect of same category of vehicle and where the number of the vehicle also is the same except for the first part of the registration number.

8. The respondent No.3 inspite of best efforts made by this court even by issuance of paper publication has not entered appearance before this court for contesting the case. In the absence of any representation of the respondent No.3, this court is not inclined to remit the matter to the Tribunal for a fresh adjudication as the respondent No.3 may still not appear for contesting and proving his case.
9. In the given facts and circumstances of the case, the only option left with the court is to direct the insurance company for making payment of compensation to the claimant first and thereafter getting the same recovered from the respondent No.3-the owner of the vehicle.
10. The appeal of the insurance company thus stands allowed in part to the extent that they shall deposit the entire amount of compensation first and the insurance company can get the amount recovered from the owner of the vehicle i.e. respondent No.3.

Sd/-
(P.Sam Koshy)
Judge

inder