Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 835 OF 2004

The Oriental Insurance Co Ltd ...Appellant
Versus
Chandrakant Chimaji Bhalerao & Ors ...Respondents

Mr DS Joshi, *for the Appellant.*
Mr RA Naik, *i/b U Mankapure, for Respondent No. 1.*
Mr ST Bhosale, *i/b Dilip Bodke, for Respondent No. 2.*
Mr CM Lokesh, *i/b GS Hegde, for Respondent No. 3.*

CORAM: G.S. PATEL, J
DATED: 14th June 2017

PC:-

1. By consent, the Appeal is taken up for hearing and final disposal on the basis of the compilation tendered. The Appeal is by the Oriental Insurance Company on a very limited aspect of the matter. The Judgment in Appeal is dated 30th January 2004. The Appellant was the 5th Opponent before the Motor Accidents Claim Tribunal, Pune. Opponents Nos. 1 and 2 were respectively the driver of a State Transport Bus and the State of Maharashtra through its State Transport Department at that time. Opponent No. 3 was the driver of the Jeep that was involved in the accident. Opponent No. 4 is the owner of the Jeep.

2. The claim was filed in the following circumstances. The Claimant, Chandrakant Chimaji Bhalerao, states that on 2nd October 1991 at about 3.30 p.m., he was travelled in Jeep No. NJI-8228 from Manchar to Kalamb. When the vehicle reached Mhalunge Phata, a State Transport Bus No. MTQ-6750 collided with the Jeep. Bhalerao was at that time seated in the left seat of the Jeep — it is unclear whether he was in the front passenger seat or the rear passenger seat. He was injured on his waist and left leg. According to him, the drivers of both vehicles were negligent. His leg was fractured. He was admitted to the Sancheti Hospital, Pune. He initially claimed compensation of Rs. 50,000/- which he then increased to Rs.1,00,000/-.

3. The driver of the State Transport Bus and the driver of the Jeep did not enter Written Statement. The owner of the Jeep, Opponent No. 4 was served but also remained absent. The Maharashtra State Road Transport Corporation, Opponent No. 2 opposed the claim application. It denied the averments in the claim. I am not concerned in this Appeal with the case against the MSRTC.

4. The insurer, Opponent No. 5, stated that there was no valid insurance cover at that time. It relied on a cover note and a carbon copy of the cover note. The Insurance Company also relied on a carbon copy of the Insurance Policy. Those three documents were before the Lower Court: Exhibit-100 was the premium receipt, Exhibit-101 was the cover note and Exhibit-102 was the policy. The insurer was careful to have a summons issued to the owner of the

Jeep. He did not respond to the summons and the insurer then led in evidence the insurer's copies of these documents.

5. The original record has been called for and I have seen these documents as marked in evidence. Mr Joshi for the Appellant submits that the policy in question was not a renewal or extension of an earlier policy. It was taken or the first time in October 1991. The date is material. The premium note is dated 30th October 1991. This is Exhibit-100. It references a Policy No. 03031.

6. Exhibit-101 is a copy of the cover note. This says that the effective date of commencement of insurance was from 29th October 1991 at 3.00 p.m. to 28th October 1992. The learned Judge found, in my view without sufficient justification, that there were interpolations in this cover note. That ought to have been put to the insurer's witness and he be given a chance to explain. There was no countervailing evidence to the contrary. In any case, it is hard to see how this could be said to be over writing. That would postulate that the effective date of commencement and date of expiry were some other dates; that these were erased or obscured by white ink or some other means and fresh dates placed. This is nobody's case and the original document does not evidence any such change, alteration or rewriting. All that appears is that the effective date of commencement and date of expiry as also of the date of issue are written in original in blue ball point pen rather than appearing through an impressed carbon. What the learned Judge seems to have overlooked also in Exhibit-101, which a careful scrutiny would have revealed, is that the authorised representative of the company has signed this carbon copy in original. Nobody suggests that the signature is a forgery or not genuine.

7. In any case, this theory of over writing completely fails when one considers Exhibit-102, the copy of the actual policy issued. This has typewritten text and not over writing. It has dates that are entirely consistent with the cover note. These dates are that the policy was valid from 3.00 p.m. on 29th October 1991 to 28th October 1992.

8. The accident occurred on 2nd October 1991, i.e., on a date when there was no existing insurance cover or policy at all.

9. Consequently, the entire order holding Opponent No. 5 to be liable cannot be sustained. There is no question of issuing an order directing the Insurance Company to pay and then recover simply because at the time of the accident the Appellant was not the insurer of the Jeep vehicle at all. The Appeal succeeds to that extent. The order and decree will have to be modified so that Clause (b) of the operative portion is directed only against Opponents No. 3 and 4 and does not include Opponent No. 5.

10. In the result, the Appeal is allowed.

11. The impugned Judgment is modified to the extent indicated above. The Appellant has deposited the amount with accrued interest with the MACT, Pune. It will be entitled to withdraw the amount with accrued interest.

12. The First Appeal is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J.)