SMT JUSTICE T. RAJANI

M.A.C.M.A. No.503 of 2008

JUDGMENT:

This appeal is preferred by the appellant—United India Insurance Company Limited, who is respondent No.2 before the Court below, assailing the judgment of the V Additional District Judge, Nellore in M.V.O.P. No.111 of 2005 dated 04.06.2007 on the ground that the judgment of the lower Court cannot be sustained as the liability fixed on the appellant is erroneous as there is no policy existing with the number furnished by the claimant.

2. Heard learned Standing Counsel for the appellant. Respondent does not appear.

3. Learned standing counsel for appellant contends that RW.1, who is an employee of the appellant company clearly deposed that there is no policy with the policy number furnished by the claimants i.e., 712701/31/02/01594 and thus no burden lies on the Insurance company. He also states that there is no Branch Office Opposite to Museum, Chennai. But the claimant cannot be expected to clearly mention the address of the Insurance Company. His burden is to show that the insurance policy existed with the respondent No.2 which was discharged by mentioning the policy number, thereby shifting the burden of proof on appellant/ respondent No.2 to disprove that the policy pertains to their office.

The evidence of RW.1 in the cross examination shows that an Investigator was appointed by the company, but no report is filed.

4. Learned standing counsel for the appellant contends that the investigator would not be appointed for verifying about the policy particulars and that the same can be known from the records available with the insurance company. But he did not give the reasons for appointment of investigator. RW.1, who is the competent person, simply states that investigator is appointed, but no report is filed. The reasons for not filing the report are not stated by him.

5. When Investigator is appointed, there should be some report from him, if not with regard to the policy particulars, the report for which he was appointed as Investigator. Hence, the burden placed on the appellant is not discharged. If the argument of the appellant has to be considered, the appellant could have outright refused that the policy number furnished by the claimant does not belong to their company and there is no need for any further appointment of investigator and non disclosure of reason for appointment of Investigator. RW.1 not explaining about the reasons for seeking such appointment would imply that the appellant felt it necessary to have an enquiry made into the validity of the policy also and hence the failure of the appellant to file the investigator's report would only enure to the benefit of the

claimant and would support the claim of the claimant that the vehicle is insured with the appellant company. Hence, there need not be any interference with the judgment of the lower Court.

6. Accordingly, the appeal is dismissed.

7. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

Date:06.10.2017
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