THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 6543 OF 2017

ORDER:

This Civil Revision petition is arising out of the order and decree dated 12.10.2017 passed in I.A.No.561 of 2017 in M.V.O.P. No.8 of 2017 by the III Additional District Judge, Asifabad.

2. The revision petitioner is the insurance company who is the 3rd respondent in the above original petition. The petitioner has filed I.A.No.567 of 2017 under Order XVI Rule (1)(3) read with Section 151 of Code of Civil Procedure to summon respondent No.6 for producing the original receipt for the insurance premium paid to the insurance company. The Tribunal has dismissed the I.A. observing that the respondent No.6 is the owner of the vehicle and he is a party to the proceeding as such he cannot be compelled to appear before the Court to produce the document sought for.

3. Heard the arguments of learned counsel for the petitioner. None appeared on behalf of respondents in spite of service of notice to them. Perused the material on record.

4. Learned counsel for the petitioner submits that the order passed by the Tribunal dismissing the application is not in accordance with the provisions under Order XVI Rule (1)(3) of Code of Civil Procedure.

5. At the outset, it would be relevant to refer to Order 16 Rule (1)(3), which read as under:

> ***" The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list."***

6. In view of the above position, the Court may, for reasons to be recorded, permit a party to summon a witness through Court, other than those witnesses whose names appear in the list of witnesses filed before the Court.

7. In the instant case, the revision petitioner filed a petition to summon the respondent No.6, who is the owner of the vehicle and also a party to the proceedings before the Tribunal. As per Sections 134 and 151 of the Motor Vehicles Act, 1988, when the burden is on the insurer to prove that the driver of the crime vehicle was not having valid driving licence, the insurer has to take steps for production of documents by the driver or owner. The provision clearly states that the insurer has to issue a notice to the driver and owner of the vehicle to produce the driving licence. It is the case of the insurer that the respondent No.6 has produced a fake insurance policy which is Ex.B1 and therefore, they wanted to summon him for production of the insurance policy receipt. Motor Vehicles Act contemplates that the insurer may call the owner of the vehicle or the driver to produce the insurance policy and the driving licence. In the instant case, the insurer, without exercising the remedies under the Motor Vehicles Act, has filed the I.A., for summoning respondent No.6. Therefore, the Tribunal has rightly come to the conclusion that the witness, who is a party to the proceedings, cannot be summoned and asked to produce the original receipt of insurance policy. The burden is on the insurer to prove that the insurance policy is a fake policy.

8. Section 151 of the Motor Vehicles Act deals with the duty to give information as to insurance. Section 158 of the Act deals with production of certain certificates, licence and permit in certain cases. Any person driving a motor vehicle in any public place shall, on being required by a police officer in uniform, authorised in this

behalf by the State Government, produce the certificate of insurance and other documents stated therein. It is further stated in Section 158(4) of the Act that the owner of the motor vehicle shall give such information as may be required by the State Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of Section 146 and on any occasion when the driver was required under this section to produce his certificate of insurance. Section 158 Clause (5) deals with the expression *"produce his certificate of insurance"* means produce for examination of the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of Section 146 of the Act. In the instant case, the witness has produced Ex.B1 insurance policy before the Tribunal; and when the insurer has taken the plea that the insurance policy is a fake policy, the burden lies on the insurer to prove his plea. Summoning of party to the Court and asking him to produce the original receipt of the premium paid towards the insurance policy Ex.B1, is not contemplated under the Evidence Act. Even as per Section 103 of the Evidence Act, the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. Therefore, the insurer cannot insist the owner of the vehicle to come before the Court to give evidence and produce the original receipt of insurance policy.

9. As per Section 134(c) of the Motor Vehicles Act, the driver and the owner of he vehicle shall furnish the information in writing to the insurer who has issued the certificate of insurance, about the occurrence of the accident, namely: (i) insurance policy number and period of its validity; (ii) date, time and place of accident; (iii) particulars of the persons injured or killed in the accident; (iv) name of the driver and the particulars of his driving licence. ***Explanation:***

For the purposes of this section the expression "driver" includes the owner of the vehicle.

10. The above provision indicates that the driver or the owner of the vehicle has to give information in writing to the insurer about the occurrence of the accident, with the particulars stated above. In the instant case, the owner has not furnished the information as required under Section 134(c) of the Motor Vehicles Act.

11. As per the provision under Order XVI Rule (1)(3), the Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list. Summoning an opposite party or his witness is an unusual step and it can be permitted only in exceptional circumstances. The said proposition of law was held in **Dr. Amitabh Sen v. M/s Sports World**[1]. There are no exceptional circumstances in this case to summon the respondent No.6, to produce the original receipt of premium paid for insurance policy. It is the discretion of the Tribunal to entertain the application for summoning the witness as contemplated under Order XVI Rule (1)(3) of CPC, and the Tribunal has rightly exercised the discretion and dismissed the application.

12. It is pertinent to note that the revision petitioner-insurance company sought for calling the owner of the vehicle as a witness in this case and also sought for production of document of insurance policy certificate. No doubt, it is the duty of the owner of the vehicle to give particulars of insurance policy and other particulars as contemplated in Section 134(c) of the Motor Vehicles Act, but in this case, the insurance policy Ex.B1 filed before the Court is said to be a

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[1] AIR 2008 Del 118

fake policy as per the contentions of the insurance policy. Therefore, in the light of the facts and circumstances of the case, the trial Court may conduct an enquiry with regard to the genuineness of the insurance policy produced before it. The insurer may also produce his evidence before the trial Court. The insurer may utilise the provision under Section 134 of the Motor Vehicles Act, and get the information from the owner and produce the same before the trial Court.

13. With the above observations, the civil revision petition is dismissed at the stage of admission. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

24th November, 2017

KNL / KSM

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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KNL