

\$~R-480

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 14th November, 2017

+ MAC.APP. 354 /2012

IFFCO TOKIO GENERAL INSURANCE COMPANY

LTD.

... Appellant

Through: Ms. Suman Bagga & Ms. Anjali
Chawla, Advs.

versus

MAJNU & ORS

..... Respondents

Through: Mr. Amit Kumar Pandey, Adv.
for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. By judgment dated 18.01.2012, on the accident claim case (suit no. 138/2011/2008) which had been instituted by the first respondent (the claimant) on 26.05.2008 while returning a finding that the said claimant had suffered injuries in motor vehicular accident that had taken place on 28.04.2008 due to negligent driving of motorcycle bearing registration no. DL 5SR 4531 (the motorcycle) by the third respondent (driver) and awarding compensation in the total sum of Rs. 1,05,600/- with interest @ 9% per annum, the motor accident claims tribunal accepted the contention of the appellant (insurance company) that the cover note relied upon to claim that the motorcycle was insured against third party risk with it was forged and fabricated but

directed it to pay the compensation and then recover it from the third respondent (driver) and the second respondent (owner of the motorcycle).

2. By the appeal at hand, the insurer submitted that the approach of the tribunal was not fair as in absence of privity of contract, there being no proof of even premium having been tendered or paid at any stage, such liability could not have been fastened upon it.

3. The second and third respondents, inspite of service have failed to appear. The appeal is resisted only by the claimant (first respondent). It is noted that the third respondent (driver) had appeared before the tribunal and by his written statement had made vague replies not dwelling at all on the issue of insurance. The second respondent did not even appear and suffered the proceedings before the tribunal *ex-parte*.

4. The evidence of Dheeraj Babbar (R1W1) Agency Manager on the strength of his affidavit (Ex.R1W1/A) clearly brought out that no premium had been paid nor any contract of insurance executed in respect of the motorcycle at the instance of its owner. The evidence of the said witness proves that the cover note bearing no. 16000286 (mark A), as had been relied upon, was a forged and fabricated document. In these facts and circumstances, the plea of the insurance company must be accepted.

5. The appeal is, thus, allowed. It being not fair to fasten any liability on the insurance company on the basis of fabricated document, the directions in the impugned judgment to the appellant to pay compensation in the first instance to the claimant are set aside.

The claimant is at liberty to execute the award against the other respondents. The amount deposited by the insurance company pursuant to order dated 30.03.2012, with accrued interest, along with statutory deposit, shall be refunded.

6. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 14, 2017

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