

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: February 14, 2017

+ **MAC.APP. 314/2008 & C.M.No.7236/2008**
THE NEW INDIA ASSURANCE CO.LTD. Appellant
Through: Mr. Pankaj Seth, Advocate

versus

ABHISHEK BHARDWAJ & ORSRespondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

Impugned Award of 18th March, 2008 grants compensation of ₹1,41,600/- with interest @ 9% *per annum* to respondent No.1-claimant on account of injuries sustained by him in a road accident on 11th August, 2002. The facts as noted in impugned Award need not be adverted to, for the reason that learned counsel for appellant-Insurer at the outset submits that neither the quantum of compensation nor the issue of negligence arises for consideration in this appeal and the solitary question involved in this appeal is of liability to pay the compensation awarded.

On the aspect of liability to pay the compensation awarded, the finding in impugned Award is that insurance cover note was handed over by R3W1/2-Kamlesh Rawat to the insured without taking any signatures and so, the plea put forth on behalf of appellant of cover note being antedated stands repelled. To arrive at this finding, learned Tribunal also relied upon evidence of insured-Dayanand (*respondent No.2 before*

learned Tribunal), who had asserted in his evidence that the cheque towards the premium for the insurance policy was given on 12th July, 2002 whereas it is the case of appellant that insurance policy was taken on 11th August, 2002.

To assail the finding on liability aspect, learned counsel for appellant-Insurer draws the attention of this Court to the deposition of its employee-*Yogesh Chand (R3W1)*, who has placed on record copy of insurance cover notes in seriatim to show that the insurance cover note (Ex.PW1/43) in question was issued in sequence with other insurance cover notes relied upon by appellant. Reliance is also placed upon the Receipt (*Ex.R3W1/2*) to show that the cheque towards premium for the insurance of vehicle in question was taken on 12th August, 2002 and not on 12th July, 2002.

During the course of hearing, learned counsel for appellant-Insurer pointed out that driver and owner of vehicle in question had not filed the written statement before learned Tribunal and even in this appeal, they have not chosen to contest. Attention of this Court was drawn by appellant's counsel to an order of 18th September, 2008 to point out that during the pendency of this appeal, awarded amount has been deposited and 50% of it has been directed to be released to respondent-claimant. Thus, it is submitted that finding on the liability aspect needs to be set aside and appellant be exonerated from paying the awarded amount. Nothing else is urged on behalf of appellant.

As per order of 26th November, 2008, respondents were served, but none had appeared on their behalf. However, learned counsel for respondent-claimant had appeared on one date, but had chosen not to

appear on subsequent dates.

With the assistance of learned counsel for appellant-Insurer, impugned Award and the evidence on record have been perused and thereupon, it becomes apparent that evidence of *Yogesh Chand (R3W1)* clinches the issue of liability as the copy of insurance cover notes in seriatim have been placed on record, which reveal that the cover notes (*Exs.R3W1/5 to R3W1/15*) have been issued in the month of August, 2002 with solitary exception of cover note in question, which is in the same seriatim and is purportedly issued in July, 2002. This by itself renders the note (*Ex.PW1/43*) unreliable. Office copy of this cover note in question (*Ex.R3W1/11*) reveals that there is an overwriting on the month of issue of this cover note. To explain this overwriting, there is evidence of *Yogesh Rawat (R3W1/2)* which reveals that the cover notes (*Ex.R3W1/5 to R3W1/15*) were issued in the month of August, 2002 and these cover notes are in seriatim and by mistake, the date of 11th July, 2002 was put on the cover note in question, which was rectified soon after and there are initials on the overwriting in the office copy of cover note in question i.e. *Ex.R3W1/11*. Even the Premium Receipt (*R3W1/2*) reveals that the cheque number in question was received on 12th August, 2002. The afore-referred evidence makes it abundantly clear that the premium for the insurance cover note in question was received on 12th August, 2002 and not on 11th July, 2002 and therefore, the evidence of insured-*Dayanand (R3W2)* deserves to be discarded. Learned Tribunal has erred in not doing so.

During the pendency of this appeal, by way of additional evidence, appellant has placed on record its Banker's Certificate of 16th October,

2004 (*which remains undisputed*). A bare perusal of this Banker's Certificate reveals that the cheque in question was encashed on 14th August, 2002. Had the cheque in question for the insurance cover note of vehicle in question been issued in July, 2002, then it could not have been possibly encashed on 14th August, 2002. This fortifies appellant's stand of insured cleverly obtaining the insurance cover note on the day of accident i.e. 11th August, 2002 at 11 A.M.. It is so evident from copy of insurance cover note (*R3W1/11*). Indisputably, the accident in question took place on the same day i.e. 11th August, 2002 at 9/9.15 A.M. Thus, it becomes clear that after the accident in question had taken place, the insurance cover note was clandestinely obtained by insured. In such a situation, the finding by learned Tribunal on the liability aspect is set aside and impugned Award is modified to the extent of putting the liability on owner and driver of vehicle in question to pay the awarded amount.

During the pendency of this appeal, appellant had deposited the awarded amount and 50% of it has been already directed to be released to respondent-claimant, therefore, it is deemed appropriate in the facts of this case, to direct the release of remaining 50% of the awarded amount to respondent-claimant with liberty to appellant to recover the awarded amount with interest from driver and owner of the vehicle in question.

The statutory deposit, if any, be refunded to appellant as per Rules.

With aforesaid directions, this appeal and the application are disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 14, 2017

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