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

Decided on: 23rd November, 2017

+ **MAC APPEAL 811/2012 and CM 12812/2012**

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Pradeep Gaur, Advocate

versus

RAMESH BUDHWAR & ORS. ... Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The accident claim case (suit no.748/2010) instituted on 25.07.2006 by the first to third respondents (collectively, the claimants) was contested by the appellant (insurer) on the grounds that there was no contract of insurance valid or subsisting in respect of the offending vehicle described as Ambassador car (taxi) bearing registration no.DL-1YA-2843 for the date of cause of action (26.04.2006), the said vehicle admittedly owned by the company represented by fifth and sixth respondents and driven by the fourth respondents statedly in a negligent manner causing death of Kusum Lata. The Motor Accident Claims Tribunal (Tribunal) rejected the said plea and concluded that it has been proved that there was a valid insurance cover.

2. The appeal at hand questions the correctness of the above said finding.
3. Upon consideration in the light of submissions made, this court finds no substance in the appeal.
4. It is admitted case of the appellant that a number of cover notes were issued by it in favour of the registered owner of the vehicle, they being valid for the period 12.03.2005 to 11.03.2006, handed over at the time when the registered owner of the offending vehicle intended to purchase the fleet of such vehicles. Concededly, the validity of the said cover notes would have come to end on 11.03.2006. But, on 01.05.2006, the insurance company made an endorsement bearing no.18903/2 and 3 on the cover note in question making it valid for the period 14.06.2005 to 13.06.2006. By this endorsement, the insurance contract thereby represented would cover the date of cause of action i.e. 26.04.2006.
5. The insurance company pleaded before the tribunal that the above endorsement was obtained fraudulently. It led evidence by examining Motor Vehicle Inspector RTO Bureri (R4W1), Divisional Manager of the company (R4W2), its investigator G.B. Mathur (R4W3) and director of the dealer (R4W5).
6. The tribunal has set out the following reasons to reject the contentions of the insurance company :-

“43. Testimony of R4W2 shows that when the respondent no.4 issued the cover notes, M/s Triumph Motors had not given the delivery of the cars including the offending vehicle to respondent no.2. There is nothing on record to indicate that

there was an understanding between the insurer and the owner / respondent no. 2 that after getting the cover note, it will intimate the respondent no. 4, the engine no., chasis no. and the registration no. allotted to the cars. R3W1 has stated that the agent had visited his office with the reference of Triumph Motors and assured that the insurance would be for one year commencing from the date of delivery irrespective of date on the cover notes. Since, he had taken the loan and it was a pre-condition, he after taking the cover notes handed over to the bank directly. He stated that the premium towards the insurance cover was paid by the Triumph Motors directly to the agent as it was part of the package.

44. In this case, the respondent no.4 did not produce the copy of the policy issued in lieu of the cover notes containing the engine no., chasis no. and the registration no. in respect of the offending vehicle. Nor any document was filed by respondent no.4 to show that it after issuing the cover notes had asked the respondent no.2 to provide the above details. R4W2 on the one hand has stated that no vehicle was insured against the above cover notes issued on 22.02.05 and 12.03.05 but on the other hand he stated that on the expiry of these cover notes, respondent no.2 failed to renew the policies which resulted in the termination of the policies on its own after the expiry of its validity.

45. R4W1 has stated that the offending vehicle was registered with the RTO office, Burari on 14.06.05 in the name of respondent no.2 and it was

hypothecated with Bank of Punjab. He also produced the copy of insurance cover bearing no. 126580 Ex.R4W1/D issued by respondent no.4 and Form no. 20 Ex.R4W1/C. He stated that the sale letter and invoice issued by Triumph Motors bears the date of 01.06.05. R4W5 has stated that the period of insurance commences from the date of registration of the vehicle and the insurance in the present case would commence from 01.06.05 i.e. the date of invoice. R4W2 has stated that the Investigator had reported that the offending vehicle was sold on 25.07.05 and it was registered on 14.06.05. The record produced by R4W1 is contrary to the report of the Investigator. It shows that the vehicle was sold on 01.06.05 and it was registered on 14.06.05 which fact was also cleared by R4W3. In the present case respondent no.4 tried to project a new picture that the date of registration of vehicle was 31.03.05 but this fact was negated by R4W3 who has stated that he does not know who forged the date of 31.03.05 on his report. Facts and circumstances rather show that the cover notes were issued prior to the vehicle came into existence. The vehicle was registered with the RTO office on 14.06.05. Question now arises as to why an insured would pay the premium for the period, the vehicle would not come in existence. Although R4W2 has denied that the policy does not apply before the vehicle comes into existence but he has admitted that the policy was issued by the office for 12 months from the date of delivery of the vehicle and in para 7.2 of annexure R4W2/29 it is mentioned that the policy period is changed because it came

into existence on road on 14.06.05. Nevertheless, Ld. counsel has stated that the policy cannot be extended and it can be renewed but we cannot lose sight of the fact that the policy becomes operative only when the vehicle comes into existence on the road. There is no denial from the fact that the cover note in respect of the offending vehicle was issued by the respondent no.4 which was also submitted by respondent no.2 before the registering authority. In this case, after the representation was given by respondent no.3, the officer of the company extended the policy after making the endorsement mentioning the engine no. and chasis no. on the policy. It has also come in evidence that in one of the matter of similar nature, the company extended the period of the policy. In this case, the policy was cancelled after the respondent no.4 came to know that the vehicle was involved in the accident but in the other case the policy was not cancelled. How the company can adopt pick and choose policy. I do not find force in the contention of Ld. counsel for respondent no.4 that the respondent no.2 fraudulently managed to get the endorsement. Facts and circumstances rather show that the endorsement was obtained by the respondent no.2 after disclosing all the material facts which were rightly considered by the officer of the company who made the endorsement. ”

7. In the considered view of this court, the reasoning set out by the tribunal cannot be faulted. This court adopts the said reasoning to reject the contention.

8. The appeal and the pending application are thus dismissed.

9. By order dated 30.07.2012, the insurance company had been directed to deposit fifty percent (50%) of the awarded amount with up-to-date interest with the Registrar General. The said amount in deposit with accrued interest shall be released to the claimants in terms of the judgment of the tribunal. The insurance company will be duty bound to discharge the balance of its liability under the judgment of the tribunal by requisite deposit with the tribunal within 30 days making it available to be released to the claimants.

10. The statutory deposit shall be refunded to the insurance company after proof is shown of the award having been satisfied.

NOVEMBER 23, 2017

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R.K.GAUBA, J.