

\$~R-586

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th November, 2017

+ MAC. APPEAL No.942/2012

NATIONAL INSURANCE CO LTD Appellant

Through: Mr. Arihant Jain for Ms. Shantha
Devi Raman, Advocate.

versus

POONAM RANA & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant (insurer) had been impleaded as third respondent in the accident claim case (MACT No. 482/10/09) instituted by first to fifth respondents (collectively, the claimants) on 06.02.2009 seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988, on account of death of Sarjeet Rana @ Parveen Rana in a motor vehicular accident that occurred on 23.05.2008 due to negligent driving of sixth respondent (driver) of Canter bearing registration No. PB-10BN-2202 registered in the name of the ninth respondent (owner).

2. On the basis of inquiry held, the Tribunal, by its judgment dated 28.05.2012, accepted the claim about the death having occurred due to negligent driving of the said canter by the said driver. It awarded compensation in the total sum of Rs.18,89,996/- and directed the

insurer (appellant) to pay with interest at the rate of 9% per annum to the claimants. The insurer had taken the plea that there was no insurance contract covering the vehicle in question, the reference to cover note No.400611312134 having been improperly made, such cover note, in fact, having been issued in respect of another vehicle bearing registration No.PB-08F-5764 in the name of one Ashok Kumar. The insurer led evidence in support of the above contention by examining Ram Mohan Puri (R3W1), its Branch Manager. The Tribunal, however, was not impressed and rejected the plea holding the insurer liable.

3. The appeal at hand is pressed by the insurer for grant of recovery rights against the sixth and seventh respondents reiterating the ground that there is no liability undertaken to indemnify.

4. The sixth and seventh respondents had been duly served but would not appear at the time of effective hearing. The appeal was admitted and put in the category of “Regulars” on 25.10.2016. When it is called out for hearing, there is no appearance on behalf of these respondents. The learned counsel for the insurance has been heard and the record perused.

5. The gist of the evidence of R3W1 was duly noted by the Tribunal in the impugned judgment thus:-

“Respondent no.3 examined one witness i.e. Sh. Ram Mohan Puri, Branch Manager, National Insurance Co. as R3W1 who brought the office copy of original cover note no. 400611312134 which was issued on 01.06.2007 to owner Ashok Kumar C/o Sukhmani Oil Carrier, 1869/44, Quila Mohalla, Dhuri Road, Ludhiana, Punjab in respect of vehicle No. PB-08F-5764 and he proved the

attested true copy of the said cover note as Ex.R3W1/1. Further witness brought the computer generated record for the premium of the said cover note collected for the period 01.06.2007 to 10.06.2007 and proved the said record as Ex.R3W1/2. Witness specifically deposed that no cover note and premium was collected by the insurance Co. for the vehicle no. PB-10BN-2202. Further witness deposed that the original cover note control register shows that cover note no. 400611312134 is in the name of insured Ashok Kumar vide policy no. 404001/31/07/6300000950 and the attested true copy of the said register showing the entry of the aforesaid cover note was proved as Ex.R3W1/3. Further witness deposed that they have issued policy no. 404001/31/07/6300000950 subsequent to the cover note no. 400611312134 in the name of insured Ashok Kumar for the period 02.06.2007 to 01.06.2008 and proved the attested true copy of the said insurance policy Ex.R3W1/4. Witness also brought the certificate regarding compliance of section 64 VB of the Insurance Act, 1938 regarding the policy no. 404001/31/07/6300000950, which shows that the premium was paid through cheque by Sh. Ashok Kumar and proved the attested copy of the said certificate as Ex.R3W1/5. Witness also brought the computer generated record of the premium register for the period 01.06.2007 to 10.06.2007 of the aforesaid cover note no. 400611312134, which shows that the policy no. 404001/31/07/6300000950 was allotted to Sh. Ashok Kumar against receipt no. 404001/81/07/0000001098 and proved the said record as Ex.R3W1/6.

Witness specifically deposed that insurance Co. has not issued cover note no. 400611312134 in respect of vehicle no. PB-10BN-2202 to Sh. Krishan Sood, owner of the vehicle and that insurance Co. is not liable to pay compensation to the petitioner as the offending vehicle no. PB-10BN-2202 was not insured with their insurance Co. and that the cover note Ex.PW1/2 attached with the

present petition is a fake cover note. In his cross-examination witness denied the suggestion that respondent No.2 Sh. Krishan Sood had made the payment of Rs.7,217/- by way of cheque no. 189406 towards the insurance of his vehicle bearing No. PB-10BN-2202 and that their insurance Co. has received any such payment from the respondent No.2. Though witness admitted that the insurance company have many channel to sell the insurance policies such as broker, agent, etc. Further witness voluntarily deposed that they only issued one cover note for one policy to the single insured and cover note book consist of 25 cover notes and different cover notes numbers are there in the cover note book. No other evidence was led by any other respondents.”

6. After taking note of the evidence adduced by the insurer, the Tribunal held thus:-

“Respondent no.3/insurance company brought on record evidence of R3W1 to point out that it is not liable to pay compensation amount as assessed by the court since the insurance cover note no.GG31 400611312134 Ex.R3W1/1 was issued to Ashok Kumar and not to owner Krishan Sood as per cover note Ex.PW1/2 filed by petitioner in her evidence. Keeping in view above respondent No.3 becomes entitled to pay entire compensation amount.”

7. Pertinent to note that neither the sixth nor the seventh respondent led any evidence to prove the payment of premium to the insurance company or to prove existence of any insurance policy. In the above facts and circumstances, mere denial on their part that the evidence of R3W1 is not correct, cannot carry the day for the said party respondents. Since they were to take the benefit of the insurance policy, it was their prime burden to prove, by some clear

evidence, the payment of premium to the insurance company. No such evidence having been adduced, it is clear that evidence of R3W1 that the cover note actually related to some other vehicle cannot be brushed aside. The reasoning set out in impugned judgment is not correct.

8. In these facts and circumstances, the insurance company is held entitled to recovery rights against sixth and seventh respondents, which are accordingly granted.

9. By order dated 28.08.2012, the insurance company had been directed to deposit the entire awarded amount and, by order dated 03.01.2014, 60% was permitted to be released to the claimants. The balance lying in deposit with accrued interest shall now be released to the claimants in terms of the judgment of the Tribunal. The insurance company has the liberty to take out appropriate proceedings before the Tribunal to enforce recovery rights.

10. The statutory amount shall be refunded to the insurance company.

NOVEMBER 29, 2017

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R.K.GAUBA, J.