NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 109 of 2014

- United India Insurance Co. Ltd. Through Authorized Authority Divisional Manager Divisional Officer Guru Kripa Towers Vyapar Vihar Road Bilaspur Distt. Bilaspur Chhattisgarh

---- Petitioner

Versus

1. Ishwar Prasad S/o Sewakram Aged About 42 Years
2. Vinod Kumar S/o Ishwar Prasad Aged About 11 Years Minor, Through his Father Ishwar Prasad (Respondent No.1)

   Both by caste Kurmi, Both R/o Village Harnamu di, P.S. Pali, Distt. Korba, Chhattisgarh.
3. Potan Singh S/o Bhuneshwar Singh Aged About 35 Years Caste Mawar, R/o Chandaniya, Ps Akaltara, Distt Janjgir Champa, Cg Hall Mukam Anand Nagar, Ps Kushmunda, Distt Korba, Chhattisgarh

   4 (A)Genrail Singh S/o Mohan Singh

   4(B) Kuldeep Singh S/o Mohan Singh

   4(C)Kanrail Singh S/o Mohan Singh

   Respondent No.4A to 4C are R/o Qr. No. B/54, Vikas Nagar, Kushmunda, Distt Korba, Chhattisgarh

---- Respondents

For Petitioner : Shri Dashrath Gupta, Advocate
None for the respondents though served.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

25/01/2018

1. Heard.

2. The present petition is against the order dated 25.09.2013, whereby an application filed by the respondents/vehicle owner under Section 65 of the

Evidence Act was allowed, whereby they produced a cover note of the policy saying that the original cover note of the insurance is lost.

3. Learned counsel for the petitioner would submit that out of the accident, one more claim case bearing No.66/2000, which was filed by another claimant was compromised by the respondent, who moved an application to lead the secondary evidence. Thereafter, in such claim case, the admission was made that the vehicle which was involved in the accident was not insured. Subsequently, by filing photocopy of the cover note in the second case, the owner of the vehicle tried to avoid the liability and take advantage to pass on the liability on the head of the insurance company. He would further submit that the order allowing the respondent/vehicle owner to lead secondary evidence is misconceived, which needs to be set aside.

4. Perused the order dated 25.09.2013 and the petition. It appears that the accident occurred in the year 2000 wherein Ishwar Prasad respondent No.1 herein, Vinod Kumar/respondent No.2 had filed a petition for compensation. In such claim case, Potan Singh, who is the driver, whereas Genrail Singh/respondent No.4A, Kuldeep Singh/respondent No.4B & Kanrail Singh/respondent No.4C were arrayed as owner of the vehicle. The application under Section 65 of the Evidence Act is also perused, wherein it is stated that photocopy of the cover note of the original insurance paper is available and the original thereof could not be traced, therefore, prayer was made to allow to lead secondary evidence in respect of the insurance of the vehicle. In reply to it, the insurance company contended that the alleged vehicle which was involved in the accident was not insured and in respect of another claim case admission was made by the owners of the vehicle that it was not insured, therefore, the existence of the document whether the vehicle was insured or not is in question. The copy of the cover note which

was allowed to be lead as secondary evidence to show that the vehicle was insured can always be denied by the insurance company by production of the necessary register of the relevant period of the vehicle which is alleged that it is an insured vehicle. Unless & until the evidence is produced before the Court, the actual averments cannot be unearthed, since one of the party is asserting the existence of the document and another respondent is claiming denial of the same. Thus, the existence of the document can only be ascertained by the other relevant documents of the relevant period. Denial of the application to lead secondary evidence at the threshold would amount to closure of the evidence of the party claiming the fact that the vehicle was insured. Reciprocally will amount to acceptance of the statement and acceptance of reply of insurance company that the vehicle was not insured that too without any evidence. The insurance company would be free to lead its evidence to show that the vehicle for the said period was not insured and the copy of the cover note is fake and not issued from their office. Those facts can be corroborated which can be corroborated by the other relevant documents only.

5. Considering the issue involved in the matter, learned Court below is directed to decide the case within a period of six months after presentation of the certified copy of this order and the claimants, if are not represented, they may be noticed through the para legal workers and the legal aid may be provided to them.

6. With such observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu