NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 525 of 2012

The New India Assurance Company Limited, Divisional Manager, Divisional Office, In front of Project Automobiles, G.E. Road Bhilai, District Durg, Chhattisgarh

Through: Authorized Authority, Divisional Manager, Divisional Office, IInd Floor, Rama Trade Centre, Above Axis Bank, Opp. Rajiv Plaza, Bus Stand Road, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh

---- Appellant

Versus

1. Vineet Agrawal S/o Madan Narayan Agrawal, Aged about 29 years, R/o. Main Road, Korba, Tahsil and District Korba, Chhattisgarh
2. Harjinder Singh S/o Harbhajan Singh, Aged about 40 years, R/o Near Bharat Mata School, Tatibandh, Raipur, District Raipur, Chhattisgarh (Driver)
3. Harbhajan Singh S/o Bagicha Singh, Aged about 62 years, R/o. Near Bharat Mata School, Khalsa Transport, PS Aamanaka Raipur, District Raipur, Chhattisgarh (Owner)
4. Vikram Agrawal S/o Bajarang Agrawal, Aged about 28 years, R/o Main Road Korba, District Korba, Chhattisgarh (Driver)
5. B.D. Agrawal, Shweta Nursing Home Korba, District Korba, Chhattisgarh (Owner)

---- Respondents

For Appellant/Insurance Co.	:	Mr. Dashrath Gupta, Advocate
For Respondent No.1/Claimant	:	Mr. Tarun Dansena, Advocate under instructions of Mr. Dharmesh Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/02/2018

1. Present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 28.02.2012, passed by the 7th Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh, in Claim Case No. 185/2011.

2. Vide the impugned award, the Tribunal, in an injury case, has awarded a compensation of Rs.9,53,500/- with interest @ 6% per annum from the date of application.

3. The counsel for the appellant submits that the Insurance Company in the instant case has been fastened with the liability. He submits that there was ample evidence brought before the Tribunal to show that cover note allegedly issued by the appellant- Insurance Company was in fact a fake document. He further submits that the witness from the branch of which the code number is reflected in the cover note was examined along with relevant documents to show that the said cover note was never issued from the said branch, nor have the Insurance Company received any premium for the said vehicle from the Owner and Driver i.e. the respondents No. 2 & 3 in the present appeal and since there is no contract entered into between insurer and insured, the insurer cannot be fastened with the liability of payment of compensation. He further submits that the Insurance Company in the instant case also led the evidence of one Mr. Sunil Paretkar, the administrative officer of the Insurance Company to substantiate their stand.

4. On the contrary, the Owner as well as the Driver have not led any evidence whatsoever and they have preferred not to appear before the Tribunal so also to before the High Court and as such there is no evidence brought on record on behalf of the Owner and Driver to hold that they had a valid cover note at the relevant point of time and thus prayed for the award to be set-aside.

5. The counsel for the Claimant however opposing the appeal submits that the Tribunal has rightly found that the Insurance Company had not discharged its liability of proving the cover note, and therefore the liability has been rightly assessed on the Insurance Company. He further submits that the Claimant has also filed an application for

enhancement of compensation by way of a cross-objection/appeal under Order 41 Rule 22 of Code of Civil Procedure and prayed for compensation to be suitably enhanced as the amount of compensation paid is an amount of more than Rs.7,50,000/- towards the medical expenses incurred by him, which by itself shows the gravity of the injury sustained by him.

6. Having heard the contentions put forth on either side and on perusal of record, admitted factual position of the case which comes is the date of accident to be 11.02.2004, the Claimant while going on the car was hit by a Truck bearing registration No. CG/04/ZC/6974. The truck was allegedly said to have been issued with a cover note from the Insurance Company effective for the period 14.01.2004 to 13.01.2005. The Claimant in the instant case was having a business of selling clothes. The Owner and Driver in the instant case of the truck involved in the accident remained exparte before the Tribunal. They did not even submit their written statement or any document to show that the vehicle was duly insured or was having proper permit of fitness at the time of accident. The Insurance Company on the other hand is said to have produced the witness Mr. Sunil Paretkar, the administrative officer of the Insurance Company, who has deposed before the Tribunal that the cover note was not issued from the branch of which the number is reflected on the cover note. He had produced the register in this regard to establish the non-issuance of such a cover note.

7. The said evidence of the Insurance Company has gone un-rebutted and there is no reason to accept the same. The finding of the Tribunal in fastening the liability upon the Insurance Company does

seem to be proper as the administrative officer on behalf of the Insurance Company working in the same branch i.e. the branch of whose number is reflected in the cover note has categorically stated that no such cover note was issued by the Insurance Company. This prima facie establishes the fact that the cover note which was issued was not genuine.

8. Further, the Owner and Driver remained exparte before this Court also inspite of proper service. Under the circumstances, this Court is forced to draw an inference against the Owner and Driver holding that the cover note which is alleged to have been used before the Tribunal was a fake document and not issued by the Insurance Company.

9. The appeal of the Insurance Company thus deserves to be and is accordingly allowed. The liability of payment of compensation stands shifted from the appellant- Insurance Company to that on the Driver and Owner i.e. the respondent no.2 & 3 in the present appeal.

10. So far as the cross-objection/appeal of the Claimant is concerned seeking for enhancement, considering the nature of injuries, which has been reflected from paragraph No.25 and also considering the statements of the Doctors, who have been examined as AW/4- Mr. V.K. Bhose and AW/5- Mr. S.N. Madhariya, this Court is of the opinion that ends of justice would meet if the Claimant is awarded additional lump sum compensation of Rs.2,00,000/- to make the total compensation payable at Rs.11,53,500/- instead of Rs.9,53,500/-.

11. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.

12. It is made clear that the liability of payment of compensation falls upon the respondent no.2 & 3. The Claimant would be at liberty to initiate appropriate recovery proceedings against the respondents No.2 & 3 for realization of the amount. Whatever amount that has been deposited by the Insurance Company shall be disbursed to the Claimant.

13. This view of the Court stands fortified from a recent decision by this Court on 14.11.2017 in MAC No. 106/2008 in the case of ***“Manager, National Insurance Company Limited vs. Khatoon Bee & Others”***.

Sd/-
(P. Sam Koshy)
Judge

Ved