

IN THE HIGH COURT OF BOMBAY AT GOA

First Appeal No.16/2011

United India Insurance Co.Ltd.
Tiska, Ponda, Goa.

Appellant.

VERSUS

1. Mr. Sunny Dias,
Aged 22 years,
Resident of H.No.149,
Ambora, Loutulim,
Salcete, Goa.
2. Mr. Damodar S.Chari
Major in age, S/o Sadanand Chari,
Owner/rider of scooter bearing
Registration No.GDJ-3088,
Residing at H.No.50, Old Market,
Margao, Goa.

RESPONDENTS.

**Cross objection No.8/2011 in
First Appeal No.16/2011**

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Tiska, Ponda, Goa.

Appellant.

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RESPONDENTS

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Mr. A.R.S.Netravalkar, Advocate for the Appellant.
Mr. Ajit R. Kantak, Advocate for respondent no.1.

**CORAM : PRITHVIRAJ K.CHAVAN, J.
JUDGMENT RESERVED ON :08/02/2018.
JUDGMENT PRONOUNCED ON :20/02/2018.**

JUDGMENT :

1. This is an appeal by the Insurer against the judgment and award dated 17.7.2009 passed by the Presiding Officer, MACT, Margao in Claim Petition No.13/2008 holding the appellant jointly and severally liable with respondent no.2, who is the owner and rider of offending scooter bearing Registration No.GDJ-3088 in the motor vehicle accident. Respondent no.1 is the original claimant.

2. The appeal is preferred only on a limited ground by the appellant by contending that the offending scooter which was owned and driven by respondent no.2 was not insured with the appellant on the date of accident. It is contended that policy number given by the claimant is vague and incorrect. The appellant has, therefore, prayed for setting aside the impugned award, as against the appellant absolving it from any liability.

3. In cross-objection, respondent no.1 has challenged quantum of compensation, as according to him, it ought to have been Rs.1,31,400/-. However, the learned Presiding Officer of the Tribunal reduced the same to the extent of Rs.78,840/-

though, there is sufficient material on record.

4. I heard Mr. Netravalkar, learned counsel for the appellant.

5. It is submitted by the learned counsel that neither respondent no.1 nor respondent no.2 had filed any document of policy on record. He drew my attention to Section 151 (1) of the Motor Vehicles Act, 1988 in that regard. The learned counsel has also specifically argued that in the written statement filed by it before the Tribunal it was specifically averred that the offending scooter which belonged to respondent no.2 was not insured with the appellant on the date of accident, which occurred on 15.2.1995. The appellant is, therefore, not liable to pay any compensation to the claimant. It is also specifically averred in the written statement that the claim has been made after a long gap of 13 years and, therefore, on that count itself, the claim ought to have been dismissed as no reasons have been assigned for the delay of 13 years and, therefore, the claim was bogus and false. The learned counsel for the appellant also argued that the cross-objection would not lie, as the appeal is on a limited ground and, therefore, prayed for its dismissal.

6. On the other hand, the learned counsel for respondent no.1-original claimant Mr. Kantak states that the findings of the Tribunal in so far as joint and several liability of the appellant and respondent no.2 are concerned, cannot be faulted in view of the reasons given in the impugned judgment. It is specifically argued that the witness of the appellant did not check the policy as its Ponda Branch from where it was issued. The learned counsel, however, challenged the findings of the Tribunal in awarding the compensation to the extent of Rs.78,840/- which, according to him, is not a just compensation in the light of the evidence tendered on record.

7. I shall first deal with the arguments of the learned counsel for the appellant as regards the insurance policy of the offending scooter. The learned counsel argued that despite specifically pleading in the written statement and giving evidence by the appellant's witness to the effect that the offending scooter was not insured with its office, the learned Presiding Officer erred in holding that the said scooter had a valid cover of insurance on the date of insurance, is unacceptable for the reasons that the extract of the motor vehicle registered tendered on record below Ex.50 indicates that the offending scooter was validly insured with the appellant from 1.6.1994 to 31.5.1995 at its branch office at Ponda-Goa

bearing no.BRO/11/93 No.0128125 year 94, Number 0387. It appears that along with other documents of the offending scooter this document in the form of insurance policy was submitted at the police station. The appellant's witness namely Mr. H.R.Murlidhar, who deposed on the basis of the record, stated before the tribunal that the offending scooter was not insured at their offices in Goa for the reason that the policies issued by the company are of more than 12 digits, unlike that referred to in the police papers with only seven digits. It is pertinent to note that as per guidelines of their office, record is maintained for a period of 7 to 9 years and thereafter, it is destroyed. That being so, the Insurer cannot take the shelter of this defence in order to thwart the claim of the respondent no.1.

8. Even there is no specific evidence by this witness that he had checked the record of Ponda Branch in order to ascertain whether the policy in question was issued or otherwise. The Insurer could have tendered some evidence in order to show that earlier policies were not issued in seven digits, as suggested to him and the witness volunteered to produce the statement to show that even earlier policies were issued which were of more than seven digits.

9. In the absence of production of policies issued during

the period in question, an adverse inference is required to be drawn against the Insurer. The learned Tribunal, therefore, has rightly placed reliance upon the judgment of the Supreme Court in the case of **National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and others (AIR 1988 SC 719)**. It is held by the Supreme Court, which reads thus:

“The Supreme Court emphasised the duty of the insurance company to produce the policy before the Tribunal in unmistakable terms. Supreme Court pointed out that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof and so the duty to produce the same cannot be insisted upon. Of course it is the duty of the party who is in possession of the document to produce the same so as to facilitate the Tribunal to arrive at a proper decision. Respondents 2 and 3 remained ex parte and as it is the specific case of the Insurance Company (appellant) that its liability is limited to Rs.20,000/- it should have endeavoured to produce the best evidence before the Tribunal in support of its contention. Failure to do so and shelving the responsibility on the claimant cannot be justified. Supreme Court in the cited decision stated .

"The Supreme Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case in instrumentalities of the State such as the appellant Insurance Company who are under an obligation to act fairly."

Thus the position is made abundantly clear that in a case where the owner of the vehicle for reasons best known to him did not produce the policy or a copy thereof it is the duty of the insurance company if it wishes to substantiate its case to produce the policy. Appellant cannot sit tight-lipped taking the stand that it is for the owner of the vehicle to produce the policy before the Tribunal”.

10. Even AW 4 PSI Naik testified that the vehicle was covered under valid insurance policy. It is pertinent to note that the police could not tender the insurance policy, as it was destroyed because the accident had occurred more than 10 years' back. It is also important to note that this witness voluntarily stated that the documents were verified and then only certificates were issued and submitted to the SDPO. There is no reason for this independent witness to give false evidence.

11. Section 151 (1) of Motor Vehicles Act, 1988 provides thus:

“151. Duty to give information as to insurance.—(1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 147 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof. ”

12. What is contemplated in this Section is that a person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of Section 147 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this

Chapter. There is no evidence forth coming whether the original respondent refused to state, as contemplated in this Section. Moreover, as already discussed above that P.S.I. Naik has already testified about production of documents at the Police Station including the insurance policy as referred to in Ex.50. There is reason to believe that respondent no.2 had produced the policy of the offending scooter at the concerned police station. The argument of learned counsel for the appellant to the effect that the police ought to have collected the policy of the offending scooter from the owner is, therefore, untenable. The appellant/Insurer cannot shirk its responsibility in producing all the material evidence in order to rebut the contention that Policy no.BRO/11/93 No.0128125 year 94, Number 0387 was not a valid policy issued by its office.

13. The learned counsel has placed reliance on a ruling reported in **2006 ACJ 1881 in case of United Indian Assurance Co.Ltd. Vs. Purrai Kishore and others**. The ratio is that, whether the Insurance Company can be held liable without claimant's establishing that the offending vehicle was insured with it on the date of accident? It is held that the Insurance Company is not liable and burden to establish the said fact is on the claimant or the owner of the

vehicle. Similar is the ratio laid down by the **Andhra Pradesh High Court in 2006 ACJ 848 in case of United India Insurance Co.Ltd. Vs. B.Jaya Lakshmi and others.** It is held that as per Section 151 of the Motor Vehicles Act, 1988 the owner of motor vehicle has a duty to furnish all particulars of insurance if called upon to do so. In that case claimants failed to ascertain particulars of the insurance of the car and, therefore, it was held that the award cannot be passed against the Insurance Company without any evidence that the vehicle was insured with it. Both these authorities would not be applicable for the reason that the owner did tender evidence to the concerned police station, as already discussed above and the Insurance Company failed to rebut the same. It is not the case at hand that there is absolutely no evidence about the policy cover of the offending scooter on record. The learned Presiding Officer of the Tribunal has, therefore, rightly considered the aspects and held the respondents jointly and severally liable to pay compensation. There is no perversity in the findings and reasons arrived at by the learned Tribunal.

14. It is argued by the learned counsel for respondent no.1 in the cross-objection that the learned Tribunal erred in reducing the amount of compensation from Rs.1,31,400/- to Rs.78,840/- which has absolutely no connection with the

future to relate the same to uncertainties of life. It is also submitted that no reasons were given for reducing the amount.

15. On the other hand, the learned counsel for the appellant objected the cross-objection, as according to him, the cross-objection does not lie in an appeal which is on a limited grounds and, therefore, the cross-objection needs to be dismissed. The appellant has placed reliance on a case law reported in **2000 ACJ 584 (National Insurance Co.Ltd.Vs. Beena Kumari and others)** and **2006 ACJ 1754 (United India Insurance Co.Ld. Vs. Krishan Chand and others)**. Though, it is held that as per Order 41, Rule 22 of Code of Civil Procedure, the cross-objection for enhancement of compensation by the claimants in an appeal by the Insurance Company is not maintainable, no reason appears to have been assigned. Even otherwise, the cross-objection would not sustain for two reasons namely: firstly, the claimant had approached the Tribunal after a long delay of 13 years about which no satisfactorily explanation has been tendered which has already been observed by the learned Tribunal, and, secondly, it could have been a case of contributory negligence in the light of the fact that the claimant-respondent no.1 who was 23 years of age at the time of giving evidence admitted in

clear terms that the accident register X-1 which indicates that “when the scooter was proceeding from Ambora towards Borim on 15.2.1995 at 15.30 hours, all of a sudden the injured came running, crossed the tar road and dashed against the scooter”. If that was the evidence before the Tribunal and, therefore, what had been awarded, according to me, is a just compensation.

16. The learned counsel for respondent no.1 placed reliance on the following case laws:

(i) In **National Insurance Co.Ltd. Vs. M/s.Swaranlata Das and others 1993 Supp (2) SCC 743**, it is held that the reasons stated by the High Court for enhancing the amount was incomplete. The Supreme Court, therefore, enhanced the amount of the compensation. This ratio is on the aspect of method of assessment of compensation taking into consideration the income of the claimant and other factors. This ratio would not be of any help to respondent no.1.

(ii) In **Renu Bala Kalita (Smt) and others Vs. Dhiren Chakravarty and others** reported in **(1988) 8 SCC 363**, it is held by the Supreme Court in para 3 and 4 of the judgment, which reads thus:

“3. In our opinion, in the facts and circumstances of the case, the amount of compensation determined in each case was at the figure which did not call

for any further deduction thereon for any reason. The deduction of 1/3rd of the amount in each case is not, therefore, justified. The High Court did not correct that error. Accordingly, we correct that error and in addition, we award interest @ 12% p.a. on the amount of compensation from the date of the claim. This modification in the Tribunal's award has to be made in these appeals.

4. Consequently, the appeals are allowed to the extent that the direction of the Tribunal for deduction of 1/3rd of the amount of compensation determined in each case is set aside. The result is that the compensation payable to Smt Nizita Bibi, widow of Hussain Ali is Rs 51,000 and the compensation payable to Smt Renu Bala Kalita and the other heirs of Khagon Chandra Kalita is Rs 1,05,000 without any deduction being made from that amount. In addition, in each of these cases, the claimants would also be paid interest on the amount of compensation @ 12% p.a. from the date of the claim. The Tribunal would ensure payment of the entire amount in each of these cases through a nationalised bank. Parties to bear their own costs".

It is held that the deduction of 1/3rd of the amount in each case by the High Court was not justified. Accordingly, the Supreme Court corrected the said error and in addition awarded interest @12% on the amount of compensation from the date of claim.

17. As already stated above, this ratio would not be of any assistance to respondent no.1 for the reason that, had the Tribunal considered the aspect of contributory negligence, respondent no.1 would have received lesser than what has been awarded by the Tribunal.

18. The corollary of the aforesaid discussion is that the

impugned award does not call for any interference in appeal nor there is any substance in the cross-objection.

19. Consequently, the appeal as well as cross-objection stands dismissed.

PRITHVIRAJ K.CHAVAN, J.

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