IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.2921 of 2018 (O&M)
Date of Decision: 05.10.2018

National Insurance Company Ltd.
.....Appellant

Vs

Maya Devi and others
.....Respondents

2. FAO No.2922 of 2018 (O&M)

National Insurance Company Ltd.
.....Appellant

Vs

Maya Devi and others
.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Ms. Radhika Suri, Sr. Advocate with
Mr. M.S. Kanda, Advocate and
Mr. Harjinder Singh, Advocate
for the appellant.

Mr. Pawandeep Singh, Advocate
for respondents No.1 and 2.

Mr. Dheeraj Mahajan, Advocate
for respondents No.3 and 4.

****

RAJ MOHAN SINGH, J.

[1]. Vide this common order, I propose to decide both the appeals i.e. FOA No.2921 and 2922 of 2018 (O&M) being preferred by the Insurance Company.

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

[2]. FAO No.2921 of 2018 (O&M) has been preferred against the award dated 01.02.2018 passed by the Motor Accident Claims Tribunal, Gurdaspur (hereinafter to be referred as 'the Tribunal') in a MACT Case No.9 of 2017 filed by the claimants namely Maya Devi widow of Nagar Ram and mother of Om Parkash and Nitika @ Nageeta minor daughter of Om Parkash for claiming compensation on account of death of Om Parkash.

[3]. FAO No.2922 of 2018 (O&M) has been preferred against the award dated 01.02.2018 passed by the Tribunal in a MACT Case No.10 of 2017 filed by the claimants namely Maya Devi widow of Nagar Ram and mother-in-law of Asha Rani and Nitika @ Nageeta minor daughter of Om Parkash for claiming compensation on account of death of Asha Rani wife of Om Parkash.

[4]. Since both the appeals have arisen out of similar cause of action, therefore, for brevity common facts are being noticed.

[5]. The accident took place on 11.04.2017, when Om Parkash along with his wife Asha Rani was going on his Moped from village Lakhanpal to Gurdaspur in connection with some domestic work. They were also being followed by Saudagar Ram and Pardeep Kumar, residents of the same village Lakhanpal on their separate motorcycle. When all of them

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

reached near T-point of village Ram Nagar Bye pass at about 2.15 p.m., one tractor make Mahindra Arjun of red colour attached with trolley was also going towards Gurdaspur. The trolley was filled with earth and the same was going ahead of Moped of Om Parkash. Om Parkash tried to over take the said tractor-trolley from right side of the road, but driver of the tractor-trolley suddenly turned the tractor-trolley towards village Ram Nagar which was situated towards right side of the road, without giving any signal. As a result of that moped/motorcycle of Om Parkash and his wife Asha Rani struck against the tractor and both of them were crushed under the tyre of the tractor. Om Parkash died at the spot on account of injuries, whereas his wife Asha Rani got multiple grievous injuries and she died on the way to Civil Hospital, Gurdaspur. FIR No.58 dated 11.04.2017 was registered with Police Station Dinanagar on the statement of Saudagar Ram son of Khushi Ram. With the aforesaid background, two claim petitions were filed in respect of death of Om Parkash and his wife Asha Rani.

[6]. It was pleaded that the deceased was aged 45 years at the time of accident and was serving in the Indian Army as Havaldar. He was also doing agricultural work. He was posted at MH Khadak Wasala (Unit) Pune and was getting a salary of about Rs.42,000/- per month. Deceased was income tax

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

assessee and was hale and hearty before his death. His entire family was dependent upon his income. Due to untimely death of Om Parkash, his family has suffered irreparable loss and injury and the family members have no independent source of income. Postmortem of the dead body was conducted in the Civil Hospital, Gurdspur and the claimants claimed compensation to the tune of Rs.90 lakhs along with interest @ 12% p.a. from the date of filing of claim petition till realization of the amount. In MACT No.10 of 2016, claim to the tune of Rs.20 lakhs was made.

[7]. The claim petition was contested by the respondents. Respondents No.1 and 2 filed joint written statement alleging that registration number of the offending vehicle was not mentioned in the claim petition and the claim petition was vague. Name of respondent No.1 was also disputed to contend that name of Visakha Singh was wrongly mentioned, whereas name of respondent No.1 was Ravinder Singh. Respondent No.1 was falsely implicated in the FIR showing him to be the driver of the vehicle, whereas respondent No.1 was not driving the vehicle at any point of time. The accident in question was alleged to have been caused due to rash and negligent driving of Om Parkash himself, who struck his motorcycle/moped against the parked tractor bearing registration No.PB-06-Q-

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

6846, which was parked on the right side of the road on its *katcha* berm. Tractor was owned by respondent No.2. It was alleged that Om Parkash tried to over take the said tractor, but in the meanwhile another tractor came from the opposite side and Om Parkash lost control of his motorcycle/moped and he along with his wife came under the parked tractor. The accident was denied in the manner as claimed by the claimants. FIR was registered against respondent No.1. It was admitted that the tractor No.PB-06-6846 was owned by respondent No.2 and the same was insured with respondent No.3-National Insurance Company Limited.

[8]. Respondent No.3 also filed its separate written statement claiming that the particulars of the offending vehicle were not furnished by the claimants or by respondents No.1 and 2. In the absence of such documents, liability on behalf of respondent No.3 was denied. Other customary pleas were taken in respect of driving licence of the driver to be not valid and the tractor being driven in breach of terms and conditions of the insurance policy. In nutshell liability was denied by respondent No.3.

[9]. After framing of necessary issues, both the parties were allowed to lead evidence.

[10]. Claimant Nitika @ Nageeta appeared as CW-1.

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

Claimant also examined eyewitness Saudagar Ram author of the FIR as CW-2. Rajesh Kumar Yadav, Senior Auditor, PAOORAMC, Lucknow was examined as CW-3, who proved salary certificate and salary statement of deceased Om Parkash as Ex.CW-3/A and Ex. CW-3/B. Thereafter claimants closed their evidence by tendering certified copy of FIR as Ex.C-1 and certified copy of postmortem report Ex.C-2.

[11]. On the other hand, respondent No.3 examined Ram Masih, Criminal Ahlmad of the Court of Judicial Magistrate Ist Class as RW-1, who tendered documents Ex.R-1 to Ex.R-4. Respondent No.2 Mohan Singh himself stepped into witness box as RW-2 and also tendered his affidavit Ex.RW-2/A and proposal form as Ex.R-5 and insurance policy as Ex.R-6. Thereafter learned counsel for respondents No.1 and 2 closed the evidence on behalf of respondents No.1 and 2. Learned counsel for respondent No.3 closed the evidence after tendering documents Mark-A to Mark-D and Mark-I on record.

[12]. The Tribunal while deciding the issue No.1, held that the accident in question took place on account of rash and negligent driving of respondent No.1. Under issue No.2, it was held that the claimants are entitled to compensation. On the basis of assessment of loss viz-a-viz. monthly income of the deceased, compensation to the tune of Rs.67,50,000/- was

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

assessed on account of death of Om Parkash. In the case of death of Asha Rani, compensation was assessed to the tune of Rs.8,70,000/-. The amount of compensation was apportioned amongst both the claimants in the manner as shown in the award. The liability of respondent No.3/Insurance Company was held for the reasons as discussed in the award.

[13]. Feeling aggrieved against the award passed in both the claim petitions, the present two appeals have been preferred by National Insurance Company Limited in this Court.

[14]. Learned Senior counsel for the appellant vehemently submitted that particulars of offending vehicle were not mentioned in the claim petition as well as in the FIR. In the criminal case, involvement of tractor bearing registration No.PB-06-Q-6847 was found and the challan was presented against the driver of the said tractor i.e. Satpal @ Billa. Tractor bearing registration No.PB-06-Q-6847 was owned by respondent No.1 and was not insured with the Insurance Company.

[15]. Learned Senior counsel further submitted that it is a case of fraud and fraud vitiates all solemn acts. In the written statement filed by respondents No.1 and 2, particulars of offending vehicle as well as Insurance Company were not disclosed. In the cross-examination of RW-2, the involvement of tractor bearing registration No.PB-06-Q-6847 was admitted.

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

[16]. By referring to ***National Insurance Co. Ltd. vs. Smt. Sobina Iakai & Ors., 2007(3) R.C.R. (Civil) 582***; ***The New India Assurance Company Ltd. Chandigarh through its duly constituted Attorney vs. Krishna Devi and others, 2008(4) R.C.R. (Civil) 652***; ***United India Insurance Co. Ltd. vs. Rajendra Singh and others, AIR 2000 (SC) 1165***; ***National Insurance Co. Ltd. vs. Harjeet Rice Mills, 2005(3) PLR 285***; ***A.V. Papayya Sastry & Ors. vs. Government of A.P. & Ors., AIR 2007 SC 1546***; ***Shyam Lal alias Kuldeep vs. Sanjeev Kumar & Ors., AIR 2009 SC 3115***; ***Mangla Ram vs. Oriental Insurance Co. Ltd. and others, AIR 2018 SC 1900***; ***New India Assurance Company, Bangalor vs. Kareemunnisa, (2009) 16 SCC 241*** and ***Oriental Insurance Co. Ltd. vs. Sunita Rathi and others, AIR 1998 SC 257***, learned Senior counsel further submitted that in case of fraud, the beneficiary of fraud can be thrown at any stage of litigation. Once it is established that the order was obtained by the successful party by practising fraud, then the same is vitiated and is *non est* and cannot be allowed to be taken. The judgment obtained by fraud has to be treated as nullity irrespective of the fact whether it was obtained from the Court of first instance or from the final Court. The order has to be treated as *non est* by every court superior or inferior.

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

[17]. Learned Senior counsel further submitted that no one can be allowed to illegal enrichment at the cost of public money and the insurance company cannot be compelled to surrender to the product of fraud and become a conduit to enrich the imposter unjustly. The insurance company deals in public money and on discovery of fraud in respect of public money, the insurance company is justified in approaching the court of law and the grievance of the insurance company cannot be ventilated very lightly. It is unrealistic to expect that the insurance company would not react on coming to know the instinct of fraud played with a view to extract the claim for compensation. Fraud vitiates all solemn acts and cannot be treated lightly. Learned Senior counsel by referring to date and starting time of insurance policy contended that the insurance company came into existence only after accident in question and the date and time of taking policy has to be taken on its face value. Time was mentioned in the insurance policy and effectiveness of the policy would start from that time and date and not from any earlier point of time. Liability of the Insurance Company would be effective from the time mentioned in the policy and not from earlier point of time. The ratio of ***National Insurance Co. Ltd. vs. Smt. Sobina Iakai*** and ***The New India Assurance Company Ltd., Chandigarh through its duly***

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

<u>constituted Attorney vs. Krishna Devi and others</u>'s cases (supra) are being pressed on the aforesaid preposition.

[18]. On the other hand, learned counsel for the respondents submitted that in view of stand taken by the owner of the vehicle, insurance amount was paid to the authorized Agent of the Insurance Company namely Rajinder Mahajan on 10.04.2017 at 10.a.m, who issued proposal form to the owner of the vehicle on 11.04.2017 and thereafter policy was issued by the Insurance Company by wrongly mentioning the time on insurance policy as 3.54 p.m. The insurance policy was taken by the owner of the vehicle, when he had paid the premium of Rs.13,967/- to Rajinder Mahajan i.e. authorized Agent of the Insurance Company. The witness was cross-examined, but not cross-examined on this point, nor any suggestion was made to him that premium amount was not paid to Rajinder Mahajan, authorized Agent of the Insurance Company on 10.04.2017. It was also not denied that Rajinder Mahajan, was not the authorized Agent of the Insurance Company, nor any evidence was led by the Insurance Company to rebut the statement of witness i.e. respondent No.2. Even Rajinder Mahajan was not cross-examined by the Insurance Company and the receipt regarding payment of premium amount was not produced by the Insurance Company.

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

[19]. Learned counsel by relying upon ***New India Assurance Company Ltd., vs. Poonam Tripathi and others, 2014(65) R.C.R. (Civil) 86*** and ***New India Assurance Company Ltd. vs. Pushpa and Ors., 2014(8) R.C.R. (Civil) 2203*** contended that the liability of Insurance Company starts from the date, when premium was paid to the insurance Agent and not from the date it was received by the Insurance Company. Insurance Company failed to show any steps taken in respect of proposal form to show that the same was forged, therefore, payment of premium amount is deemed to be admitted in the absence of any such denial or putting suggestion to the owner of the vehicle or by getting insurance agent examined. The contract between the parties got completed on acceptance of premium amount by the insurance Agency on behalf of the insurer/Insurance Company. Absence of certificate of insurance cannot disentitle the insured for indemnification of the liability by the Insurance Company.

[20]. Learned counsel also by referring to ***The New India Assurance Co. Ltd. vs. Ram Dayal and others, 1990(2) PLR 144*** contended that the policy taken during any part of the day becomes operative from the commencement of the date of insurance. The Insurance Company has not adduced any evidence to show that the proposal form was not received by the

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

Company before the accident. The proposal form and the money was paid to the authorized Agent and was received by the Insurance Company. Non-examination of the insurance Agent and non-production of receipt would make the Insurance Company liable even if, there was some irregularity in showing the time of issuance of policy. Learned counsel referred to ***Oriental Insurance Co. Ltd. vs. Minor Ramesh Thro' Guardian Ranchhodji D. Thakor and others, 2011(21) R.C.R. (Civil) 708*** and ***Oriental Insurance Co. Ltd. vs. Rajesh and others, 2008(18) R.C.R. (Civil) 580***.

[21]. In view of stand taken by learned counsel for the parties, I have perused the record of the case carefully.

[22]. Perusal of the record would show that claim petition was registered on 01.05.2017. Notice of the petition was issued to the respondents for 17.05.2017. Respondent No.1 appeared through counsel Sh. Uttam Sandhu on 17.05.2017. Particulars of respondents No.2 and 3 were ordered to be disclosed on the next date of hearing i.e. 19.05.2017. On 19.05.2017, written statement on behalf of respondent No.1 was not filed. Respondent No.1 suffered a statement that Mohan Singh was the owner of the offending vehicle. Address of Mohan Singh was also given. Mohan Singh was ordered to be impleaded as respondent No.2 in the claim petition by making necessary

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

correction in the claim petition. Process was issued to respondent No.2 by the Tribunal for 05.07.2017.

[23.] On 05.07.2017, following order was passed by the Tribunal:-

> *"Sh. Uttam Sandhu, Advocate has also filed power of attorney on behalf of respondent No.2. He has also filed written statement on behalf of respondents no.1 and 2. Perusal of written statement shows that vehicle in question was insured with National Insurance Company, Branch Office G.T. Road, Gurdaspur at the time of accident. Accordingly, said Insurance Company is ordered to be impleaded as respondent no.3 in the present claim petition. Reader of the court is directed to make necessary correction in the claim petition. Thereafter, respondent no.3 National Insurance Company be summoned through ordinary process as well as RC on furnishing of the same within three days for 09.08.2017. Replication to the written statement filed by respondents no.1 and 2 if any be also filed on that date."*

[24]. Perusal of aforesaid order would show that the name of Insurance Company was disclosed as National Insurance Company and the same was impleaded as respondent No.3. The process was issued to respondent No.3/Insurance Company for 09.08.2017. On the adjourned date i.e. 09.08.2017, respondent No.3 appeared through Sh. Vikrant Mahajan, Advocate. Written statement was not filed on 09.08.2017, 16.08.2017, 23.08.2017 and 07.09.2017. The case

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

was adjourned for filing written statement of respondent No.3. Subject to last opportunity for filing written statement, the case was adjourned to 13.09.2017. On 13.09.2017, written statement was filed on behalf of respondent No.3. An application was also filed for production of documents. Another application under Section 170 of the Motor Vehicles Act, was also filed. The case was adjourned for 19.09.2017. On 19.09.2017, it was recorded that application for production of documents stands disposed of as necessary documents were supplied to respondent No.3. Second application under Section 170 of the Motor Vehicles Act was also allowed on the basis of no objection given by the parties. Insurance Company/respondent No.3 was allowed to take all the defences available to respondents No.1 and 2. Issues were framed on the said date.

[25]. The evidence of the claimants was concluded on 20.12.2017, when learned counsel for the claimants closed their evidence by tendering certain documents. No evidence was led by the respondents on 03.01.2018 and 10.01.2018. One RW-1 was examined on 17.01.2018 and one more opportunity was granted for leading entire evidence on behalf of the respondents on 23.01.2018. On 23.01.2018, one more witness was examined on behalf of respondents No.1 and 2. Learned counsel for respondents No.1, 2 and 3 closed their evidence on

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

behalf of the respondents and the case was fixed for rebuttal (if any) and arguments for 25.01.2018. On 25.01.2018, rebuttal evidence was closed on behalf of the claimants and arguments were heard. Respondent No.3/Insurance Company also submitted written arguments. Ultimately case was decided on 01.02.2018 vide the impugned award.

[26]. The statement of RW-1 Ram Masih would show that he was Criminal Ahlmad in the Court of Judicial Magistrate Ist Class, Gurdaspur. Criminal case No.63 of 13.11.2017 was registered under Sections 304-A/279 IPC at Police Station Dinanagar in FIR No.58 of 2017. The challan was presented against Satpal Singh son of Sajjan Singh, who was chargesheeted under Sections 304-A, 279, 427 IPC. The tractor involved in the aforesaid case was bearing registration No.PB-06-Q-6847. The tractor was released on Sapurdari in favour of Ravinder Singh son of Mohan Singh on 03.07.2017. The aforesaid witness was cross-examined by learned counsel for respondents No.1, wherein witness stated that he has no personal knowledge regarding Ex.R-1 (certified copy of challan) and Ex.R-2 (photocopy of chargesheet). The witness was not cross-examined by learned counsel for respondent No.3/Insurance Company. The witness RW-1 has specifically pleaded that he had no personal knowledge about the criminal

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

case. Investigating Officer of the criminal case has not been examined in order to prove the documents tendered along with report under Section 173 Cr.P.C.

[27]. Statement of RW-2 Mohan Singh would show that in his examination-in-chief dated 10.01.2018, following recital was made in para Nos.3, 4 and 5:-

> *"3. That infact the accident has been caused due to the sole negligence of Sh. Om Parkash Son of Sh. Nagar Ram who has struck his Moped in the Standing Tractor bearing Registration No.PB-06-Q-6846 which was standing on the right side on the katcha berm of the Road, belonging to the deponent. The accident was caused due to the sole negligence of deceased Om Parkash since he was in the process to overtake the standing Tractor and in the meanwhile, he had failed to overtake the Tractor in question, since there was another Vehicle coming from the opposite side and due to losing control of his Moped, he along with his Wife had come under the standing Tractor. Now the Police of Police Station Dina Nagar has presented the challan before the Trial Court against Sat Pal @ Billa son of Sh. Sajjan Singh, resident of Vilalge Pandher, Tehsil and District Gurdaspur in case bearing F.I.R. No.58 dated 11-4-2017 Under Sections 304-A, 279, 427 I.P.C. and falsely involved the vehicle bearing Registration No.PB-06-Q-6847. Infact the said alleged vehicle bearing Registration No.PB-06-Q-6847 was never involved in the alleged accident.*

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

4. That infact, no accident was ever took place with the vehicle in question as alleged. The vehicle in question is owned by the deponent and the same has been insured with the National Insurance Company Limited, Branch Office G.T. Road, Mandi Gurdaspur. That on dated 10-4-2017 Rajinder Mahajan Authorized Agent of the respondent No.3 Insurance Company, having Agent Code No.2901 has met with the deponent and has taken away the amount of Rs.13,967/- from the deponent on 10-4-2017 at 10 A.M. Thereafter on the next day, said Rajinder Mahajan has sent the Proposal Form to the deponent on dated 11-4-2017 and thereafter the Policy has been issued to the deponent. The time regarding issuance of policy has wrongly been mentioned at 15:54:00. In fact the policy has been taken by the deponent on 10-4-2017. The Proposal Form is Ex.R-5 and Policy is Ex.R-6.

5. That the claimants have demanded exaggerate amount. Moreover the respondents are not liable to pay any compensation to the claimants, since they are not at fault at any part. The accident was caused due to the sole negligence of deceased Om Parkash since he was in the process to overtake the standing Tractor and in the meanwhile, he had failed to overtake the Tractor in question, since there was another Vehicle coming from the opposite side and due to losing control of his Moped, he along with his Wife had come under the standing Tractor. It is further submitted here that the vehicle in question

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

> *bearing Registration No.PB-06-Q-6846 is owned by respondent No.2. The vehicle in question bearing Registration No.PB-06-Q-6846 is insured with the National Insurance Company Limited, Branch Office G.T. Road, Mandi Gurdaspur. If this Ld. Court comes to the conclusion that the claimants are entitled for compensation, then the respondent No.3 Insurance Company is liable to make the payment of the same to the claimants. It is further stated here that at the time of alleged accident, the Tractor in question is being used by the deponent for digging and for leveling his own land. The deponent has not violated any term and conditions of the Insurance Company rules."*

[28]. Perusal of the examination-in-chief of the aforesaid witness would show that involvement of tractor bearing regn. No.PB-06-Q-6847 was pleaded with the pleadings that other tractor was standing on the right side on the *katcha berm* of the road and the accident was caused by the deceased. Cross-examination of the witness has to be read in consonance with his entire statement wherein, he stated/pleaded at the initial stage, it was correct that the accident occurred with tractor No.PB-06-Q-6846 and not with Tractor No.PB-06-Q-6847. It was pleaded that PB-06-Q-6847 has no concern with the accident and the police has submitted a wrong challan. Thereafter, in his cross-examination the witness has stated about the facts of the criminal case wherein FIR was registered against tractor No.PB-

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

06-Q-6847 and challan was presented against Satpal driver. Tractor was released in favour of respondent No.1 on Sapurdari. Perusal of the cross-examination would further show that the witness has pleaded the relevant facts in respect of pendency of criminal case arising out of involvement of tractor No.PB-06-Q-6847. Tractor was not pleaded in the FIR as well as in the claim petition, it was disclosed in para No.3 of the written statement dated 05.07.2014 filed by respondents No.1 and 2.

[29]. Appellant/Insurance Company despite having knowledge of involvement of tractor bearing registration No.PB-06-Q-6846 as disclosed in the written statement did not bother to verify its official record. In the written statement filed by respondent No.3, no such disclosure was made as regards commencement of insurance policy after the time of accident. The documents were made available to the appellant/Insurance Company on 19.09.2017, when documents were tendered and issues were framed. RW-1 was examined on 17.01.2018. The witness was not even cross-examined by respondent No.3. No suggestion was given to the witness in respect of involvement of of tractor bearing regn. No.PB-06-Q-6846 in place of tractor bearing regn. No. PB-06-Q-6847. The witness was not at all cross-examined by the appellant/Insurance Company.

[30]. The witness RW-2 in his statement has specifically

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

denied involvement of tractor bearing regn. No.PB-06-Q-6847 and pleaded involvement of tractor bearing regn. No.PB-06-Q-6846. The statement of witness has to be read in its entirety and not in isolation. Perusal of statement would show that there was no such admission with regard to false implication of tractor bearing regn. No.PB-06-Q-6846 in the claim petition. Ex.R-5 and Ex.R-6 were exhibited in the statement of RW-2. The witness was not cross-examined on the aspect of genuineness of the documents (Ex.R-5 and Ex.R-6). Ex.R-5 is the proposal form submitted by the insurance Agency after receiving an amount of Rs.13,967/-. No suggestion was given to the witness that in fact the proposal form was wrongly filled and policy was wrongly issued. The only cross-examination of the witness in respect of involvement of tractor bearing regn. No. PB-06-Q-68467, which was released in favour of son of the witness namely Ravinder Singh is not sufficient to discard his entire statement which demonstrate the involvement of tractor bearing regn. No. PB-06-Q-6846 and where involvement of tractor bearing regn. No. PB-06-Q-6847 was specifically denied.

[31]. The proceedings before the Motor Accident Claims Tribunal are summary in nature. Even strict procedure in terms of Code of Civil Procedure is not applicable, rather in the instant case, statement of RW-1 and RW-2 stood the test of lengthy

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

cross-examination. Nothing incriminating could be extracted by the appellant/Insurance Company, rather RW-1 was not cross-examined by the appellant/Insurance Company. RW2 was not cross-examined on the aspect of Ex.R-5 and Ex.R-6. The claim cases are to be decided alike civil cases, though no strict rule of procedure is applicable on the basis of preponderance of probability.

[32]. The fraud has not been pleaded by the appellant/Insurance Company, nor any evidence was brought on record despite sufficient opportunities for filing written statement after production of documents on 19.09.2017. Appellant/Insurance Company did not lead any evidence. RW-1 and RW-2 were not examined by the respondents. Appellant/Insurance Company did not lead any evidence in respect of fallacy in respect of Ex.R-5 and Ex.R-6. Insurance Agent was not examined and Ex.R-5 and Ex.R-6 have gone unrebutted in the absence of any cross-examination of RW-2 on the said aspect.

[33]. In view of legal position on record, particularly in the light of the evidence of the claimants and Ex.R-5 and Ex.R-6, having gone unrebutted, I find that there is no reason to disbelieve the findings recorded by the Tribunal after appreciation of evidence.

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document

[34]. For the reasons recorded hereinabove, I find no merit in both the appeals. The same are accordingly dismissed.

October 05, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No

MOHMED ATIK
2018.10.10 11:12
I attest to the accuracy and
authenticity of this document