IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 577 OF 2015

The New India Assurance Co. Ltd.,
through its Regional Manager,
Regional Officer, Dr. Ambedkar
Bhawan, M.E.C.L. Premises, 4th Floor
High Land Drive, Seminary Hills, Nagpur. .

.... **APPELLANT**

...V E R S U S...

1] Dagdusing Manoharsing Tomar,
Aged about 36 years, Resident of Balapur,
Tq. Balapur, Dist. Akola.

2] Mahendrasing s/o Maniramsing Chaudhary,
Aged Adult, R/o Sagar Complex Building,
Room No.6, 2nd Floor, Bombay-Pune
Road, Kasarwadi, Pune-32..

...... **RESPONDENTS**

Shri M.B. Joshi, Advocate for Appellant.
Shri Alaspurkar, Advocate with Shri A.M. Tirukh, Advocate for respondent No. 1.

CORAM: S.M. MODAK, J.
DATE: 11.12.2020

ORAL JUDGMENT

1] Heard learned Advocate Shri M.B. Joshi for Appellant / New India Assurance Company and learned Advocate Shri Alaspurkar with learned Advocate Shri A.M. Tirukh for the respondent No.1/Claimant/Injured. The respondent No.2, the owner of the Offending Vehicle/Truck though was served has not appeared.

2] The issue involved in this appeal is, whether the Offending Vehicle/Truck was insured with the Appellant/ New India Assurance Company. In addition to that, there is an emphasis about the negligence of the injured/Motorcycle Driver rather than the negligence of Truck Driver. So question is whether on the basis of available evidence an inference can be drawn about the relationship in between the New India Assurance Company and Truck Driver. There is also an emphasis on failure of the New India Assurance Company to prove non-existence of the insurance policy.

3] In addition to that, there is a prayer for enhancement of the compensation, mainly for the reason that Claims Tribunal has not considered the income of the injured from the source of selling of vegetables. So also, there is a request to consider the compensation on account of pain and agony and under other grounds. There is also request to consider the loss on account of future prospects.

4] With their assistance, I have perused the record. The main issue, is whether an inference can be drawn about the relationship in between Insurer and Insured. I have gone the evidence of the claimant alongwith some documentary evidence, which consists of copy of charge-sheet at Exhibit No.21, copy of First Information Report (F.I.R.) at Exhibit No.22, copy of Crime Details Form at Exhibit No.23, copy of Accident Report Form at Exhibit No. 24 and importantly Form Comp AA at Exhibit No.26. Whereas, on the side of the New India Assurance Company, they have placed on record the evidence of representative of Mahadeo Pande and the certain correspondence made with the owner and driver of the truck at Exhibit Nos.63 and 65, an acknowledgment at Exhibit No.64 and returned envelop at Exhibit No.66.

5] Admittedly, neither of the parties have filed on record, the insurance policy either in the original or in any other format. It will be material to consider what are the findings given by the Claims Tribunal. Admittedly, there is no issue framed on this aspect by the Claims Tribunal. There is an emphasis on non-framing of issue on behalf of the insurance company. Whereas the claimant contended that there is insufficient pleading in the written statement on this issue. My attention is brought to para No. 2 of the written statement filed on behalf of Insurance Company. The relevant portion is “particular No.16 as regards insurance is denied for want of confirmation of the policy”.

6] Whereas, the learned advocate for the appellant invited my attention to Column No.16 of the claim petition filed under Section 166 of the Motor Vehicles Act,1988. While giving the details i.e. ‘name of policy, policy number and insurance particulars, the claimant has said “Respondent No.3 has mentioned in the title”. So, it is also true that the claimant has not given the details of the insurance policy i.e. Policy Number, Date of Issuance of Policy and Branch, who has issued it. From these pleadings, it can certainly be said that the insurance company has denied the existence of the policy. The reasons may be different. Either it may be on account of non-confirmation of the policy or on account of non-issuance of the policy altogether.

7] The Claims Tribunal has negated the contention about the non-existence of the policy. In paragraph No.18 of the judgment, the claims tribunal has given weightage to the answer given by representative Shri Mahadeo Pande of the Insurance

Company. He has said "the contents of Comp AA Form at Exhibit No.26 are true and correct." The Claims Tribunal has refused to accept the contention of the Insurance Company. This admission has given entire weightage to the findings of the Insurance Company. On this background, the learned advocate Shri M.B. Joshi, invited my attention to cross-examination of Shri Mahadeo Pande. No doubt, he has admitted the contents in Comp AA Form Exhibit 26. At the same time, he has also denied the suggestion that offending vehicle was insured with their company. The evidence has to be read in its entirety. It is also material to consider the correspondence made on behalf of the Insurance Company vide two letters dated 07.03.2012 at Exhibit No. 63 and 30.01.2013 at Exhibit No. 65 written to the owner and driver of the offending vehicle truck. The insurance company has demanded the necessary documents including copy of Policy, R.C. Book and Other papers. Though the owner of the truck namely Shri Mahendrasing s/o Maniramsing Chaudhary has received the letter vide Exhibit No.64, the company says that he has not complied with requisition. Even the owner has chosen to remain absent before the Claims Tribunal. The letter sent to the driver returned unserved.

8] When the question was put to the claimant about the policy details during his cross-examination, he has admitted that he could not get the insurance paper and hence he could not produce the same. The issue is, whether the Claims Tribunal was justified on the basis of this evidence to draw an inference about the existence of the policy and on whom the burden to prove about the existence of the policy lies. The appellant relied upon the judgment in case of ***Oriental Fire and Insurance Company Limited V/s Dr. G.R. Purohit and others reported in I (1999) ACC 138 (DB) .*** This Court was pleased to set aside the decree granting compensation and dismiss the suit against the insurance company for the reason that the policy was not proved. This Court was pleased not to consider an entry in R.T.O. Record mentioning the name of the Insurance Company as sufficient enough to draw an interference about insurance policy. It will also be material to consider the provisions of the Motor Vehicles Act and the Rules.

9] Learned Advocate Shri M.B. Joshi for the appellant invited my attention to the provisions of Section 134 of the Motor Vehicles Act, 1988. It mandates the concerned person to give the information to the insurer including the policy number and its validity (Section 134) (Clause-c) (i). – Whereas Rule 254 (8) of the Maharashtra Motor Vehicles Rules, 1989, mandates the police station to submit a detail report to the Claims Tribunal having territorial jurisdiction over the place of accident. The information has to be submitted in Form Comp AA. When I have perused the form, Clause No.9 says about the details of the Insurance Company.

10] The injured or legal representatives of the deceased may not be knowing and certainly not about the insurance company with whom the offending vehicle is insured. These provisions have been incorporated so as to assist the victim of vehicular accident to approach the Court of law for getting compensation. That is why obligations have been cast on the policy holder and even on Regional Transport Office. Now, question arises is that, how the police station may fill in details of Form AA.

11] Many times it happens that after the accident took place, the information is given to police and police also used to register the F.I.R. on the driver of the offending vehicle. Sometime it also happens that the details of the offending vehicle may not be available with the Police. In this case, in the FIR, the registration number of the offending truck is mentioned. It was very much useful for the police to collect necessary details, either from the owner and driver of the vehicle or from the Regional Transport Office. It includes the information about the existence of the insurance policy. But, I would like to opine that the concerned Police Officer seems not to have taken sufficient care in collecting the details of the insurance policy from either of the source. He has satisfied himself in only mentioning the name of the Insurance Company as New India Assurance Company. So, I find that this is the first stage, wherein the concerned officer has not fulfilled his responsibility.

12] The same mistake/omission continued when the claimant has filed the claim petition under Section 166 of the Motor Vehicles Act. The claimant has restricted himself, only by writing the name of the Insurance Company. He after taking legal advise has not enquired about what are the details of the Insurance Policy. So, at the stage of filing of petition also there is an omission /mistake on the part of the claimant.

13] The Court on various occasions come across the cases, wherein policy is disputed/denied. There are cases regarding policy obtained by fraudulent means. There are also cases, wherein the details of the policy are incomplete. Just like when, the digits are not appearing on the policy produced before the Court. Depending upon the facts of the every case, Court is required to assess the evidence.

14] In the present case, does not involve either of the contingency mentioned above. This is the case, wherein existence of the policy itself in dispute. On this background, the steps taken by the Insurance Company are to be considered. Once they were made known about the accident, they have taken steps by writing letter to the owner and Driver of Offending Vehicle. The claimant is not satisfied with the contents of those letters.

15] According to learned advocate Shri Tirukh, there is no mention in those letters about non-existence of privity of contract and subsequent breach of the policy. I think that it is not required. The reason is the Insurance Company was at the stage of collecting materials and verifying the existence of the Insurance Policy. So at this stage, they were justified in only asking the information. It is not the case of the claimant that the stand taken by the Insurance Company about denying the relationship is taken afterthought or as per the whims of the officers at the helm. The company is the Public Sector undertakings. So, I do not think that they will take a stand thereby denying the existence of the policy.

16] Certainly, the onus will shift on the insurance company to prove to the contrary only when the claimant has discharged his initial burden. No doubt the law mandates the owner of the vehicle to obtain statutory policy prior to vehicle has been put to use. It is no doubt to true that the Motor Vehicle Act is a social legislation. It does not mean that the claimant is discharged from all of the requirements. The approach of the Court in appreciating the evidence in such case, is certainly not strict as what is expected in a criminal trial or in a civil suit. <u>But it does not mean that the Court can give go bye to the basic requirement</u>. The contract of insurance indemnifies the owner from all losses occurred to him. Such liability will arise, only when the contract is proved.

17] There is an argument that the insurance company has neither examined the driver nor the owner of the vehicle, so that adverse inference can be drawn against them. In support of the said contention, reliance is placed on the judgment in case of

Vidhydhar V/s Manikrao reported in (1999) 3 SCC 573. It is true that when the person is taking a specific stand and when he has chosen not to enter the witness box, the Court is bound to draw an adverse inference. This proposition can be made applicable depending upon facts of each case. I am afraid that the ratio can be made applicable in this case. The initial burden was on claimant to prove the existence of the insurance policy. It is difficult to prove a negative fact that is to say non-existence of the insurance policy.

18] The insurance company have shown their bonafides by writing letters. Even they have taken abundant precaution to prove these letters by examining the witness. <u>So I think in this case, the Claims Tribunal was wrong in answering this issue in favour of the claimant. The Claims Tribunal has considered only one admission given by the witness Shri Mahadeo Pande in cross-examination</u>. The rest of answers were not considered. He might have given that answer due to wrong understanding or understanding of the question as per his perception. Merely because, he has given that admission does it mean to say that the rest of the answers can be overlooked ? The answer is no. So I feel that the claimant has failed to discharge his burden to prove that the offending vehicle truck was insured with the appellant / insurance company. The findings need to be set aside. The outcome will be the dismissal of petition against the insurance company. Though the learned advocate has tried his level best to convince me not to interfere in that finding, for the reasons stated above, I am unable to subscribe to his views. I am inclined to set aside those findings.

Amount of Compensation

19] Both the learned Advocates have argued on this aspect. But during the midst of the dictation, it is submitted that the claimant is not in a position to pay the Court fees if amount is enhanced. On hearing the submissions, there is a prayer to remand the matter and to consider it sympathetically. It is opposed by learned advocate Shri M.B. Joshi. The claimant is ready to waive the interest.

20] In view of this submission, I have not gone into the prayer for enhancement of the compensation. As I have already said that it is the police officer who has committed fault, at the first stage by not writing the details of policy in Form AA. The claimant may not be aware about the procedural requirements, has not expected the compliances and the consequences. He must be bound by the legal advise. So I think if the claimant is given one chance to prove about the existence of the policy and if he can succeed then certainly the interest of justice can be protected. But I want to make it clear that remand is possible only for giving an opportunity to claimant to prove the policy and not on other issues including the injury and expenses. At the same time, the claimant will not claim interest from today till disposal of the petition. Hence, the order:-

ORDER

a] The appeal is partly allowed.

b] The judgment dated 18.12.2007 passed in MACP No. 265/2007 is set aside.

c] The matter is remanded back to MACP Akola for limited purpose.

d] The claimant is permitted to examine the witnesses only on the point of proof insurance policy.

e] If the claimant wants he can amend the petition, so as to include necessary details.

f] The Appellant/Insurance Company is also permitted to amend the written statement in above contingency.

g] The Insurance Company is also at liberty to examine the witnesses.

h] Both the parties are directed to appear before the Claims Tribunal on 01.02.2021 and no fresh notices will be issued.

i] The claims Tribunal only to issue notice to the respondent Nos. 1 and 2 in that petition.

j] It is made clear that the claimant will waive interest from today till the final decision of claim petition after remand.

k] Remaining amount be transferred to MACT Akola with direction to deposit that amount in a fixed deposit in any Nationalized Bank and to disburse the amount as per the final decision.

l] The claimant is directed to give an undertaking, that he will return the amount already withdrawn, if decision will goes against him.

m] The MACT Akola is directed to expedite the matter and to decide preferably within a period of one year.

n] Parties to bear their own costs.

<u>JUDGE</u>

RKN