

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 562 OF 2005

M/s National Insurance Co. Ltd.
having it's Regd and Head Office at
3 Meddleton Street, Kolkata – 700060
and Divisional Office at Hazari Chambers
Station Road, Aurangabad – 431 005
through it's Divisional Manager
Mr. Shrikrishna S/o Ramji Bodade, 51 Yrs

... **Appellant**
[Orig. IInd Opponent]

Versus

1. Smt. Bejam Bano w/o Sabdder Sk
32 Yrs, Occ. Household work
R/o C/o S. V. Darade, Advocate
Darade Pleader's Mala, Datta Mandir Rd.,
Manmad Dist. Nasik

Org. Claimant

2. Mohanlal s/o Madanlal Soni
major, Owner of Jeep MXI-2146,
Cloth Merchant, r/o Bolthan,
Tq. Nandgaon Dist. Nasik

[Org. Resp.No.1]

... **Respondents**

....

Mr. V. N. Upadhye, Advocate for appellant
Mr. R. V. Gore, Advocate for respondent No.1
Mr. A. S. Bajaj, Advocate for respondent No.2

....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 29th NOVEMBER, 2021

PRONOUNCED ON : 17th MARCH, 2022

J U D G M E N T :-

This is Insurance Company's appeal, taking exception to
the judgment and order dated 28.02.2005, passed by the

Commissioner for Workmen's Compensation, Aurangabad, under the Employees' Compensation Act, granting compensation of Rs.97,500/- with interest at the rate 12% p.a. from the date of accident to the date of payment of entire amount.

2. Facts giving rise to the present appeal are as follows:

An accident involving two vehicles, namely, Jeep bearing No.MXI-2146 and a truck, took place on 18.04.1986. As a result of the injuries suffered in the said accident, the jeep driver (Sabdder Shekh) died. His widow (applicant), therefore preferred application for compensation against the owner of the jeep and its insurer. It is her case that deceased Sabddar Shekh was in employment as Driver of the jeep. On the instructions of the jeep owner (Respondent No.2 herein), the deceased was carrying relations of the jeep owner. As such, the deceased suffered the injuries and died.

Both, the owner of the jeep and the insurer (appellant) filed their written statements disputing the averments in the application for compensation. The jeep owner, however, did not participate in the proceedings before the Commissioner. The appellant – Insurance Company came with a case that the jeep involved in the accident had not been insured with it on the day of the accident. It has, therefore, no liability to pay any compensation.

3. The learned Advocate for the appellant – Insurance Company would submit that the application was preferred about six years after the accident. No papers of insurance of the Jeep involved in the accident were ever placed before the Commissioner. From day one of the appearance of the appellant – Insurance Company in the proceedings, it has denied to have granted insurance cover to the Jeep. The extract of the R.T.O. record appears to have been manipulated. The witness examined in proof of the R.T.O. record had agreed to produce cover note from its record. He, however, did not place on record the same. Entry in the R.T.O. record would not be reliable piece of evidence in proof to grant insurance cover. The learned Advocate relied on a judgment of Division Bench of this Court in the case of *Oriental Fire & Insurance Company Limited Vs. Dr. G. R. Purohit & Ors – 1999 STPL 7 Bombay*, to ultimately urge for allowing the appeal.

4. Both the learned Advocates for the respondent No.1 claimant and owner of the vehicle would, on the other hand submit that the appellant – Insurance Company did not lead any evidence in the rebuttal of the claim application. The R.T.O. record is a public document. Entries therein are made in the official course of business.

Such record, therefore, carries presumptive value of it being correct. The reliance is placed on the judgment of this Court in the case of *United Assurance Co. Ltd. Vs. Ananda Mahadu Baviskar and others – 2009 SCC OnLine Bom 864* and the judgment of Rajasthan High Court in the case of *The New India Assurance Company vs. Mohinder Kaur And Ors – 1(1989) ACC 172*.

5. Considered the submissions advanced. Perused the evidence relied on. Also gone through the authorities relied on.

6. An accident took place way back on 18.04.1986. The police papers relating to the accident indicate it to have occurred between the Jeep (No. MXI-2146) and a truck. The truck fled. The jeep driver Sabdder Shaikh died as a result of the injuries suffered in the accident. The applicant claiming to be the widow of the deceased Sabdder filed the application for compensation. Admittedly, she did not place on record any document indicating the Jeep to have had an insurance cover granted by the appellant – Insurance Company. It appears that evidence in the proceedings came to be recorded about fifteen (15) years after the accident. A Clerk from the office of the R.T.O. Nashik was examined in proof of insurance cover to the Jeep. An entry in the R.T.O. record suggests that the Jeep had an insurance

cover granted by the appellant – Insurance Company for the period from 10.01.1986 to 09.01.1987. Cover note number recorded therein is 407095. Relying on this piece of evidence, the Commissioner held the appellant – Insurance Company to be the insurer of the Jeep involved in the accident and therefore, allowed the application directing the appellant and the owner of the Jeep to jointly and severally pay the amount of compensation. It is reiterated that the appellant – Insurance Company has all along been contending to have had not granted insurance cover for the relevant period. An affidavit of its official was also placed on record in that regard. The official from the R.T.O. did not place on record a copy of so called cover note. As such, the question is whether based on the R.T.O. record the Commissioner was justified in directing the appellant – Insurance Company to pay the amount of compensation. In the case of *Mohinder Kaur (supra)*, it is observed that the Insurance Company could have produced the papers of insurance cover granted. Failure to produce the policy was held against the Insurance Company therein. There can be no dispute that the appellant – Insurance Company being one of the party to the contract of insurance is in possession of policy/cover note and related papers thereof, but when the appellant – Insurance Company

had on affidavit denied to have ever granted insurance cover to the Jeep involved in the accident, how could it be able to place on record policy of insurance.

7. The Division Bench of this Court in the case of **Dr. G. R.**

Purohit and others (supra) , has observed thus:

“.....In this case one should keep in mind that it is the case of the Insurance Company that defendant No.2 is not the owner of the oil tanker in question and that the said tanker was not insured with defendant No.3. The plaintiffs have not been able to produce any evidence to show that in fact the tanker in question was insured with defendant No.3 – Insurance Company for the said period. A mere entry in the RTO Books referring to name of defendant No.3 does not establish the fact that the vehicle in question in fact was insured with defendant No.3. The learned trial Judge has also relied upon the notice which is at Ex.81 given by the plaintiffs to defendant No.3 to produce the insurance certificate and since defendant No.3 failed to issue the said certificate the trial Judge drew an adverse inference against defendant No.3. According to us, however, this is not a case where adverse inference can be drawn against defendant No.3 – Insurance Company. The plaintiffs called upon defendant No.3 to produce the insurance certificate. But, admittedly the insurance certificate always remains with the person who insures the vehicle and even as per the plaint since it is the case of the plaintiffs the defendant No.2 was the owner of the tanker in question, the insurance certificate ought to have been sought for from defendant No.2. Obviously, there was no question of defendant no.3 producing any insurance certificate.”

8. The findings of the learned Single Judge in the case of **United Assurance Co. Ltd. (supra)**, would be of no avail to the

respondents herein in view of the Division Bench judgment of this Court in the case of *Dr. G. R. Purohit & Ors (supra)*.

9. In view of this Court, the Commissioner ought not to have relied on the entry in the R.T.O. record to hold the appellant – Insurance Company liable to pay compensation. There is no evidence to indicate on the basis of what material/evidence the entry was made in the R.T.O. record. For want of foundational evidence, entry in the R.T.O. record cannot be a basis for grant of the application for compensation. This Court is therefore inclined to interfere with the impugned judgment and order. With this, the appeal succeeds in terms of following order.

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 28.02.2005, passed by the Commissioner for Workmen's Compansation, Labour Court, Aurangabad in Application W.C.No.26 of 1992, is hereby set aside as against the appellant – Insurance Company.
- (iii) The amount in deposit with this Court, be paid back to the appellant – Insurance Company with interest accrued thereon, minus the amount directed to be paid to the respondent-claimant vide order dated 17th March, 2022.

[R. G. AVACHAT, J.]