

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2811 OF 2021

HDFC Ergo General Ins. Co. Ltd.
General Manager, 4th Floor, New City
Mall, Kapur Bawadi, Jangtion, Majiwadi
Naka, Thane East- 400 607

Through its Branch Manager,
2nd Floor, Manpani's Oberoi Tower,
Opp. Government Milk Dairy,
Ramanand Colony, Jalna Road,
Aurangabad

Through Authorized Signatory

Appellant

Versus

1. Shivaji Murlidhar Bhadgale
Age : 47 years, occ : agri.,
R/o Usthal Dumala, Tq. Newasa,
District Ahmednagar.
2. Janardan Shankar Bhujan
Age : major, occ : driver
R/o Chincholi Limbaji, Tq. Kannad,
District Aurangabad.
3. Shaikh Jalal Shaikh Ibrahim
Age : major, occ : business
R/o as above.

Respondents

WITH

CIVIL APPLICATION NO. 5191 OF 2022

IN FIRST APPEAL NO. 2811 OF 2021

Shivaji Murlidhar Bhadgale

Applicant

Versus

HDFC Ergo General Insurance Company
and others

Respondents

...

Mr. S.S. Dargad, Advocate for the appellant.

Mr. Sachin Kotkar, Advocate for respondent – claimant.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 04.10.2022

Judgment pronounced on : 06.12.2022

Judgment:

1. The appellant Insurance Company was the original respondent No.3 in Motor Accident Claim Petition No.282/2014, has challenged the judgment and award dated 06.02.2021 passed by the learned Motor Accident Claims Tribunal at Newasa, District Ahmednagar (hereinafter referred to as “the learned Tribunal”) only on the ground that the policy under which the offending vehicle i.e. Eicher Tempo bearing registration No. MH-20-CT-2450 was insured covering the date of accident, was in fact fake and fabricated, and therefore, the learned Tribunal should have exonerated the appellant Insurance Company totally from the liability of paying compensation.

2. The record shows that the original claimant i.e. present respondent No.1 was travelling on his motorcycle on 08.03.2012 in between 9.00 p.m. and 9.30 p.m. from Ahmednagar to Aurangabad. When he had reached Handi

Nimgaon village in front of Hotel Gurudatta, the aforesaid offending vehicle i.e. Eicher Tempo gave dash to his motorcycle from backside, and therefore, he sustained injuries. The manner in which the accident took place and registration of crime against the driver of Eicher Tempo are not disputed. Moreover, though the specific ground for challenging the quantum awarded has been taken, but during the course of arguments, the learned Counsel for the appellant Insurance Company only preferred to argue on the only aspect that the policy of offending vehicle was fake and fabricated.

3. The learned Counsel for the appellant Insurance Company vehemently argued that the Insurance Company has discharged the burden of proving the policy in dispute being fake and fabricated by examining concerned witness of the Insurance Company, who produced on record Register of Cover Note at Exh.67, copy of Extract of Premium received Register at Exh. 68 and Search Note at Exh.69. He pointed out that the aforesaid documents clearly indicated that no premium was received in respect of the aforesaid cover note allegedly issued by the Insurance Company. As such, he prayed for total exoneration of the Insurance Company from liability of paying compensation.

4. On the contrary, learned Counsel for contesting respondent No.1 – original claimant supported the finding of the learned Tribunal in respect of the aspect of policy being fake and fabricated. He pointed out that the issuance of said cover note was admitted by the Insurance Company and the Insurance Company had also taken alternative stance that the said cover note was in fact lost by it.

5. With the assistance of rival counsel for the parties, I have gone through the impugned judgment as well as entire record and proceeding of the claim petition. The learned Counsel for the appellant Insurance Company relied on the judgment of this Court in the case of ***Vishram Shriram Pandit vs M/s Balaji Carriers and others*** reported in ***2005 (1) TAC 678***. As against this, learned Counsel for respondent NO.1 – claimant also relied on the judgment of the Hon'ble Apex Court in the case of ***New India Assurance Co. Ltd. vs Rula and others*** reported in ***(2000) 3 SCC 195***.

6. Since this is the only issue involved in this appeal, I find it necessary to go through the finding of the learned Tribunal on this aspect which is evident from para-19 of the impugned judgment. It is not disputed by respondent No.1 – claimant that there was breach of policy conditions on

account of offending vehicle not having transport permit and fitness certificate for which the learned Tribunal has directed the appellant – Insurance Company to pay compensation first and then to recover it from the owner.

7. On going through the finding of the learned Tribunal on the aspect of the policy being fake and fabricated, it is evident that the concerned witness of appellant – Insurance Company i.e. the Assistant Manager Anil Laxman Babhulkar has produced on record copy of Register of Cover Note (Exh.67), copy of Extract of Premium received Register (Exh.68) and Search Note (Exh.69). The learned Tribunal on scrutinizing these documents has come to the conclusion that though the Insurance Company later on developed the defence that the said cover note was lost by it. However, it appears that the Insurance Company had not lodged any complaint in respect of such alleged loss. The Insurance Company also did not give any intimation to any concerned Authority or R.T.O. for registering its grievance. Moreover, the witness of Insurance Company has specifically admitted that search report of the said cover note below Exh.70 is the report in respect of cover note relied by the claimant.

8. The learned Counsel for the Insurance Company vehemently argued that the copy of extract of premium register at Exh.68 does not show any amount of premium received by the owner of offending vehicle, and therefore, the only presumption can be drawn that the cover note relied upon by the claimant was fake and bogus, and therefore, the offending vehicle was not covered under the said cover note. However, on perusal of the said cover note at Exh.69, it appears that the offending vehicle was insured at the hands of its owner i.e. present respondent No.3 for the period from 27.01.2012 to 26.01.2013 covering the date of accident. Moreover, the amount of Rs.21,451/- is also appears to be paid by Cheque No. 441199 dated 27.01.2012 drawn on Aurangabad District Central Co-operative Bank. It is extremely important to note that the Insurance Company could have shown non receipt of premium in respect of the said cover note by examining the concerned person from the aforesaid bank. However, no such attempt is made by the Insurance Company. The Insurance Company has disputed its liability only on the presumption that as the said cover note was lost, then it must have been used to show that the offending vehicle was insured with it. The Insurance Company has also not examined the owner of offending

vehicle who could have thrown more light on the aspect of premium, since in the said cover note it was specifically mentioned that the premium amount was paid through cheque. Therefore, merely because the Insurance Company claimed that the cover note was lost by it, the inference that it was used falsely to show that the vehicle was insured, cannot be drawn. The learned Tribunal has also arrived at the same conclusion by observing all these facts, and therefore, the view taken by the learned Tribunal cannot be faulted with.

9. Learned Counsel for the appellant – Insurance Company heavily relied on the aforesaid judgment in the case of *Vishram Shriram Pandit vs M/s Balaji Carriers* (supra) wherein it is observed that owner of the offending vehicle has to produce policy to ascertain the fact that at the time of accident his vehicle was insured. However, nothing of that sort is here in this matter, because the cover note relied by the owner of offending vehicle is very much on record and the Insurance Company is claiming that the said cover note was in fact lost by it and it was subsequently used falsely to show that the offending vehicle was insured with it. As such, the aforesaid judgment is not helpful to the appellant – Insurance Company.

10. As against this, the learned Counsel for respondent No. 1 – claimant relied on the judgment of Apex Court in the case of *New India Assurance Co. Ltd. vs Rula and others* (supra) wherein it is held that when there was no premium received for the policy, the cover note under such policy remains unaffected by the subsequent cancellation of the policy after the accident. However, such is also not the case in this matter, because the Insurance Company is making allegations against the owner of offending vehicle that he used the lost cover note for showing the insurance of his vehicle. Even if it is assumed for the sake of the argument that no premium was paid by the owner of offending vehicle under the said cover note, then also there is nothing on record to show that the Insurance Company had in fact intimated the owner or any concerned Authority after it found that the said cover note was lost. Therefore, considering all these aspects, I find that there is no substance in the appeal as the learned Tribunal has appropriately dealt with this aspect of the insurance cover note being false and fabricated. As such, no interference is required at the hands of this Court in the impugned judgment. Resultantly, the appeal fails and dismissed accordingly.

11. Needless to say, respondent No.1 – claimant is entitled to withdraw the amount of compensation as deposited by the appellant – Insurance Company alongwith accrued interest thereon till date. Accordingly, the pending Civil Application No. 5191 of 2022 also stands disposed of.

(SANDIPKUMAR C. MORE, J.)