IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

110 **FAO-1455-2021 (O&M)**
Date of decision:20.01.2023

Tata AIG General Insurance Company Limited **...Appellant(s)**

vs

Chandrika Devi & Others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sachin Ohri, Advocate for the appellant.

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NIDHI GUPTA, J.

Present appeal has been filed by the Insurance Company seeking setting aside of impugned Award dated 25.01.2021 passed by Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as "the learned Tribunal") whereby compensation of Rs.12,82,600/- was granted to claimants/respondents No.1 to 5 herein.

Brief facts of the case are that the learned Tribunal on the basis of the pleadings and evidence placed before it concluded that the deceased-Bisheshwar Ram had died due to the injuries suffered by him in a motor vehicular accident that took place on 08.04.2014 due to the rash and negligent driving of the Gypsy bearing registration No.JK-05-3579 (hereinafter referred to as "the offending vehicle"), being driven by respondent No.6 herein/driver of the offending vehicle. Claimants before the Tribunal were the widow and four major children of the deceased.

The learned Tribunal held the appellant liable to pay the compensation primarily on the ground that the appellant failed to establish before the learned Tribunal that the Insurance Cover Note Ex. RW2/B was not in existence on the day of the accident. Therefore, the appellant, along with respondents No.6 and 9 being driver and owner of the offending vehicle respectively, were held jointly and severally liable to pay the compensation.

Learned counsel for the appellant/Insurance Company submits that it was at the oral asking of respondent No.6/driver of the offending vehicle, that a cover note Ex. R-9 was issued in favour of the offending vehicle on 14.04.2014, in continuation of the original existing policy Ex.R-8 valid from 15.04.2013 to 14.04.2014. It is submitted that it was only subsequently that it was discovered that the said cover note for the period 15.04.2013 to 14.04.2014 Ex.R-8 which was given by the owner of the offending vehicle for renewal of the policy, was a fake and forged cover note. However, in the interregnum the accident in question had occurred on 08.04.2014. It is submitted that therefore, the offending vehicle was not properly insured at the time of accident, and therefore, the appellant has been wrongly held liable.

No other argument is made on behalf of the appellant.

Heard.

From the pleadings and arguments advanced on behalf of the appellant it follows that it is the pleaded case of the appellant that the Cover Note bearing No.WM12801616 Ex.R-9 (Annexure A-2 with the Appeal) admittedly issued by the appellant, did not cover the date of accident as the same was valid from 15.04.2014 to 14.04.2015. It has further been submitted by learned counsel for the appellant that this cover note Ex.R-9 was issued on 14.04.2014 at the oral asking of respondent No.6/driver of the offending vehicle. It has also been submitted in para 6(c) of the Appeal, that at the time of taking the policy/cover note in question Ex.R-9, the '*owner had produced a Policy of insurance issued to vehicle bearing no. JK-05-3579 issued from the United India Insurance Company Ltd. which was valid from 15.4.2013 to 14.4.2014'*. It has however, been submitted that even this aforementioned Policy showing validity from 15.04.2013 to 14.04.2014 Ex. R-8 (Annexure A-3 herein), is fake. It has further been stated that the respondent No.9 had placed on record a copy of the cover note No. WM12801616 Mark 'B' (Annexure A-1 with the Appeal), as valid from 08.04.2014 to 07.04.2015, which was also fake.

From the above pleadings it follows that the Policy Ex. R-8 valid from 15.04.2013 to 14.04.2014 is stated to be fake, however, no evidence in support of this contention is there on record. Further, it is the appellant's case in para 6(c) of the Appeal that the policy Ex. R-8 was produced by the owner of the vehicle on basis of which the appellant issued cover note in question Ex.R-9 dated 14.04.2014. However, at time of arguments it has been stated that cover note Ex. R-9 was issued on 14.04.2014 on oral asking of driver/respondent No.6 herein. There is no explanation for this discrepancy. It is also relevant to note that all the three policies/cover notes mentioned above are in the name of Naresh Kumar earlier owner of the offending vehicle/respondent No.7 herein.

It has also been pleaded/sought to be proved that cover note No.WM12801616 Mark 'B'/Ex. RW2/B (Annexure A-1 with the Appeal), valid from 08.04.2014 to 07.04.2015, which was produced before the Tribunal by Girwar Dhari/respondent No.9 herein, is also fake. In this regard the following findings contained in Para 36 of the impugned Award, are relevant and are reproduced hereinbelow:-

> *"36. There is no dispute between the parties that Naresh Kumar was original owner of the vehicle in question, bearing RC No.JK-05-3579 and he further sold the vehicle to Girwar Dhari respondent No.5, vide affidavit Ex.RW-2/A, on 29.10.2013. The said vehicle met with an accident on 8.4.2014, when the same was driven by respondent No.1 Vijender, who hold the valid driving license, at the time of accident. Since respondent No.5 Girwar Dhari has purchased the vehicle, on the basis of the affidavit, as such, the vehicle was in his possession and not in possession of the registered owner. The registered owner namely Naresh Kumar had also obtained the Insurance Cover of the vehicle, but he had sold the vehicle to Girwar Dhari and it is the case of Girwar Dhari that he had also obtained the Insurance policy of the vehicle, on 8.4.2014. According to him, he got the Insurance Policy Ex.RW-2/B. From the perusal of the same, it is evident that the said policy cover was valid from 8.4.2014 to 7.4.2015. However, there is dispute between respondent No.3 TATA AIG General Insurance Co. Ltd. and respondent No.5 Girwar Dhari, regarding the insurance as well as Cover Note No.WM 12801616, issued in favour of Naresh Kumar registered owner of the vehicle. As per the submission of learned counsel appearing on behalf of TATA AIG General Insurance Co. Ltd., the said cover note infact was issued on 14.4.2014 and not on 8.4.2014, as alleged by Girwar Dhari, whereas the case of Girwar Dhari respondent No.5 is that the Insurance cover note No. WM 12801616 was infact issued on 8.4.2014 and not on 14.4.2014. However, so far as the signatures on the cover note and the genuineness of the cover note are concerned, the same are not disputed. It is not the case of TATA AIG General Insurance Co. Ltd., that the cover note relied upon by Girwar Dhari does not relate to their insurance company. The cover note bearing No. WM 12801616 is common in both the cover notes i.e. one brought on record by TATA AIG General Insurance Co. Ltd. and the other brought on record by Girwar Dhari. In so far as the other columns of the Insurance Cover Note are concerned, those are also not disputed byTATA AIG General Insurance Co. Ltd. The only question raised by TATA AIG General Insurance Co. Ltd., is regarding the validity of insurance cover note, as according to the said Insurance company, it was issued on 14.4.2014 and*

not on 8.4.2014. Thus, the only dispute is regarding the date of validity, appearing in the cover note. Once the Tribunal come to the conclusion that cover note Ex.RW-2/B brought on record by Girwar Dhari, bears the signatures of authorized officer of the Insurance Company and the same was given to its agent by the Insurance Company for utilizing the same, so as to cover the insurance risk of the vehicle insured, prima facie, the Tribunal shall have come to the conclusion that, unless otherwise proved, the cover note Ex.RW-2/B duly signed by the authorized officer of the Insurance Company, is a genuine cover note, issued on the date, shown therein and all the columns are filled in on the respective dates and the burden is on the Insurance Company to prove that though the said cover note purports to have issued on 8.4.2014 and infact, in reality, it was not issued on the said date and was not in existence on 8.4.2014, when the accident took place. If the insurance company discharges that burden, then it can be said that the said cover note Ex.RW-2/B was not in existence on the date of accident and hence, there was no contract between the parties. In order to prove that the impugned cover note Ex.RW-2/B was not in existence on the date of accident, respondent No.3 TATA AIG General Insurance Co. Ltd, has relied upon the other document Ex.R-3, From the perusal of Ex.R-3, this Tribunal finds that the insurance company had handed Insurance book No.716325, containing 15 cover notes, to Sidheshwar Motors Pvt. Ltd. The said book was issued on 7.4.2014 at 4.31 p.m. The first page of the book starts from WM 12801611 and the last running page is shown as WM 12801625. The insurance cover note issued in favour of Girwar Dhari, is WM 12801616.

TATA AIG General Insurance Company Ltd., has produced the carbon copy of the cover notes, but the carbon copies produced on record are only of the cover notes from WM 12801611 to WM 12801615 and the carbon copy of cover note No.WM 12801616, which is in dispute, has not been produced on record by the Insurance Company. From the carbon copy of the cover notes from WM 12801611 to WM 12801615, it is evident that the first cover note was issued on 9.4.2014, second was issued on 11.4.2014, third on 11.4.2014, fourth on 12.4.2014 and similarly, the cover note No.WM 12801615 was issued on 14.4.2014, but thereafter, for the reasons best known to the Insurance Company, they have not produced the carbon copies of further cover notes, starting from WM 12801616 to WM 12801625. As per the Insurance book Ex.R-3, the first running cover note No.WM 12801611 was allegedly issued on 9.4.2014. Though the said circumstance raised some suspicion, but that is insufficient to come to the conclusion that the cover note Ex.RW-2/B was not in existence on the date of the accident, in the light of the carbon copies of the insurance cover notes, issued on other dates, prior to 14.4.2014 i.e. WM 12801611 to WM 12801615. The contention of learned counsel appearing on behalf of the said Insurance Company that the cover note relied upon by Girwar Dhari respondent No.5 was not at all issued on 8.4.2014, can only raise suspicion and nothing more. There is no evidence brought on record to show as to who was that person, who made the entries in the respective columns. No official from Sidheshwar Motors Pvt. Ltd., was examined, to whom, the insurance company issued the cover note book, for further issuance of the cover notes."

Even at the time of argument, Learned counsel for the appellant/Insurance Company is unable to refute or controvert the above findings of the learned Tribunal. Taking it a step further, in my view, even if Ex. RW2/B is assumed to be fake, even then there is nothing on record to doubt the veracity of Ex.R-8 which was admittedly, valid from 15.04.2013 to 14.04.2014, and on basis of which current cover note was issued by the appellant company. In my considered opinion, there are too many loopholes/ loose ends in the case put forth by the appellant which is not convincing.

Accordingly, I find no merit in the Appeal and the same is hereby dismissed.

Pending application(s) if any also stand(s) disposed of.

20.01.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No