

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 31.10.2022

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Pronounced on : 18.05.2023

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MAC.APP. 25/2017

SHRIRAM GENERAL INSURANCE CO LTD Appellant

Through: Mr. Sameer Nandwani, Advocate.

versus

KAMLESH JHA & ORS Respondents

Through: Mr. Pankaj Gupta, Advocate for R-1.
ASI Karambir Singh, P.S.B.Pura.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the orders dated 17.09.2015 and 25.11.2016 passed by Ms. Madhu Jain, Presiding Officer, MACT, Saket Courts, New Delhi in Suit No. 219/13 with the following prayers:-

“A. That this Hon'ble Court may be pleased to accept the appeal by setting aside the orders dated 17.09.2015 & 25.11.2016 passed by Ms Madhu Jain, P.O. MACT, Saket Courts, New Delhi in Suit No.219/13 by the Tribunal on the grounds stated in the appeal and dismiss the claim petition with costs through out.

C. Costs of the appeal be also awarded.

D. Any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case be also awarded.”

2. In brief, the facts of the case are that on 19.12.2012 at about 08.15 am, Kamlesh (Injured) was going for his duty to Mahagun Modern Real Estate Pvt Ltd at Sector- 78, Noida, Uttar Pradesh on his bicycle and when he reached near OBC bank, Baraula, offending vehicle i.e., bus bearing number UP-86-T-0749 driven by respondent no. 2, in a rash and negligent manner, hit the bicycle of injured from back side in a forceful manner, due to which injured Kamlesh fell down on the road and both legs of the injured were crushed by the said offending bus. The injured was immediately removed to Prayag hospital by the PCR Van. As a result of the accident, the injured Kamlesh (respondent No. 1) suffered 80 % permanent disability in relation to his left lower limb. A case FIR No. 386/2012 under sections 279/338/427 IPC was registered at Police Station Sector 49, Noida.

3. I have heard the learned counsel appearing on behalf of the Appellant as well as Respondent no. 1 and have perused the records of this case.

4. It is submitted by the learned counsel for the Appellant- Insurance Company that the Learned Tribunal has erred in not exonerating the appellant once having come to the conclusion that the vehicle was not insured at the time of the accident. It is further submitted that the learned Tribunal erred in granting recovery rights to the appellant and the liability to pay the award amount should not have been put on the shoulders of the appellant when it was already proved on record before the Ld. Tribunal vide order dated 25.11.2016 that the cover note produced by the owner of the offending vehicle was fake and thus, the vehicle was not insured at the time of the accident. It is further contended that the learned Tribunal has also

erred in adding 30% future prospects as they are not to be awarded in an injury case and an exorbitant amount of compensation has been awarded towards hired help as well as for future treatment along with rate of interest @ 9% p.a., which is on the higher side and therefore, prays that the appellant-Insurance company be absolved from any liability to pay any compensation to the claimants and shall be exonerated *in toto*. In support of his contentions, learned counsel for the appellant has placed reliance on ***Darilian Passah Vs. Batriti Lyngdoh & Ors., M.A. No. 1 of 2004 (Decided on 26.04.2010).***

5. On the other hand, Ld. counsel for respondent No. 1 has disputed aforesaid claim of the appellant Insurance Company with submissions that the injured Kamlesh has suffered 80% permanent disability in relation to his left lower limb in the accident in question and it's a case of post traumatic amputation involving left lower limb above knee. It is submitted by him that the compensation awarded by the Ld. Tribunal towards attendant charges, compensation for disfigurement, special diet and conveyance is on the lower side and furthermore, Ld. Tribunal has erred in not awarding any amount under the head of mental and Physical Shock. It is further submitted that due to the disability, the injured had to leave his job and has not been able to work thereafter and thus, the functional disability should not be less than 75%.

6. In the impugned Award dated 17.09.2015, Ld. Tribunal awarded a sum of Rs. 19,72,440/- with interest @ 9% per annum, in favour of injured Kamlesh (Respondent No.1) and against the appellant-Insurance company,

and vide subsequent order dated 25.11.2016, the insurance company was able to prove its defence that the vehicle was not insured with their company as the cover note produced was fake and accordingly, recovery rights were granted to the insurance company from driver and owner of the offending vehicle.

7. The present appeal has been filed by the Appellant-Insurance Company on the ground that once the Ld. Tribunal had come to the conclusion that the offending vehicle was not insured with the Insurance Company, no direction could have been issued to the Insurance Company to pay the compensation to the injured/claimant and then recover the same from the owner and driver of the offending vehicle.

8. The Ld. Tribunal while granting recovery rights to the appellant-Insurance Company vide order dated 25.11.2016, made the following observations:

“ In the present case, award was passed vide order dated 17.09.2015. Subsequently, insurance company moved an application under section 114 of CPC r/w order 47 and section 151 of CPC seeking review of the order stating that official of the insurance company signed written statement wherein in the parawise reply policy number of the vehicle is mentioned as 108025/34/13/010472 for a period from 26.11.2012 to 25.11.2013 and policy was admitted by the insurance company. Thereafter, award was passed in favour of claimant and at the time of processing of the award, it transpired that policy number mentioned in the written statement are not of the vehicle which is offending vehicle in the present case and the policy of the offending vehicle is fake. In these circumstances, insurance company was directed to deposit the award amount

*in the name of court in the bank with the liberty to insurance company to lead their evidence regarding their plea regarding fake cover note within a period of three months from 07.05.2016. Subsequently, insurance company has led its evidence and has examined one Rama Raman, Manager (Legal), Sriram General Insurance Company Limited as R3W1 who deposed that owner of the vehicle has manipulated dates in the cover notes and cover note placed on record shows that insurance of the offending vehicle bears particulars of the vehicle which are different from the offending vehicle. The testimony of R3W1 has remained unchallenged and unsheltered as none of the driver and owner have appeared. R3W1 further stated that they have given complaint regarding the fake cover note to the SHO and SSP Gautam Budh Nagar but are not aware whether FIR has been registered. Hence, **insurance company is able to prove its defence and is granted recovery rights from driver and owner after discharging its liability within 30 days.**"*

9. In ***Bharti Axa General Insurance Co. Ltd. Vs Gayabai Devrao Weldode & Ors., First Appeal No. 4447 of 2016 (Decided on 25.03.2019)***, the Hon'ble Bombay High Court has observed and held as follows:

" Thus, obviously on the date of accident the offending jeep was not insured with the appellant / Insurance Company. On 01.05.2013 there was no contract of insurance in between the Insurance Company and the owner of offending vehicle. It follows that the Insurance Company is not liable to indemnify the owner of offending vehicle for the accident which occurred on 01.05.2013. In the circumstances, considering the date of payment of premium on 09.05.2013 (Exh.43), I have no hesitation to hold that copy of insurance policy filed by the claimants at Exh.29 is certainly a fake and tampered policy of insurance. Therefore, the appellant / Insurance Company is not at all liable to pay the compensation to the claimants. As this is not the case of breach of condition of policy, but the case of absence of contract of insurance of the offending vehicle on the date of accident, even the

'pay and recover' order cannot be passed against the Insurance Company. Both the cases relied on by the original claimants are distinguishable on facts.

In the result, I hold that the appellant / Insurance Company deserves to be exonerated in toto and no direction can be issued against the Insurance Company to pay compensation amount to the claimants and later on recover it from the owner of offending vehicle. Accordingly, I answer point Nos. 1 and 2 in negative."

10. In ***Jyoti Jha & Ors. Vs. Kamal & Ors., MAC APP. No. 1016 of 2013 (Decided on 27.07.2017)***, the Hon'ble High Court of Delhi, observed that no liability can be fastened on insurance company on the basis of a fake Cover Note and thus, exonerated the insurance company from any liability.

11. In ***Darilian Passah Vs. Batriti Lyngdoh & Ors., M.A. No. 1 of 2004 (Decided on 26.04.2010)***, the Hon'ble Gauhati High Court has observed that where the insurance policy is found to be fake, the insurance company cannot be directed to pay the compensation to the claimants and then recover the same from the owner of the vehicle.

12. In the present case, a perusal of the Order dated 25.11.2016 shows that the driver and owner of the offending vehicle (Respondent Nos. 2 & 3 herein) did not even appear before the Ld. Tribunal in order to prove the veracity of the cover note in question. There is no material evidence put on record by the owner or driver of the offending vehicle to contradict the specific defense raised by the appellant- Insurance Company and thus, the testimony of "R3W1" remained unchallenged. In these circumstances, the

inference drawn by the Ld. Tribunal cannot be said to be unjustified and the said issue is decided accordingly.

13. Given the finding of the Ld. Tribunal that the cover note was fake and thus, the offending vehicle was not insured with the appellant-Insurance company at the time of the accident, coupled with the settled legal position as stated above, the Insurance Company cannot be directed to pay the compensation amount to the claimant and then recover the same from the owner and driver of the offending vehicle, therefore, the appellant-Insurance company deserves to be exonerated *in toto* and no liability can be fastened upon the insurance company.

14. However, as far as the contention of the learned counsel for the appellant-Insurance Company that the learned Tribunal has erred in adding 30% future prospects in an injury case, this Court is of the opinion that the same cannot be accepted as it is trite law that future prospects can be claimed in accident cases involving serious injuries resulting in permanent disablement. Reliance can be placed upon the judgment of the Hon'ble Supreme Court in *Sidram Vs. Divisional Manager United India Insurance Co. Ltd., Civil Appeal No. 8510 Of 2022(Arising out of SLP (C) No. 19277 of 2018)*.

15. Learned counsel for the appellant-Insurance Company submitted that the entire awarded amount has been deposited by the appellant with the State Bank of India, Saket Courts, New Delhi by a cheque bearing No. 045790 dated 13.10.2016. In such case, the appellant-Insurance Company is

at liberty to withdraw the said amount with interest accrued, if any, in view of the order passed by this court.

16. Accordingly, the appeal along with pending applications, if any, stands disposed of subject to the above said modifications in the impugned orders. There shall be no order as to costs.

RAJNISH BHATNAGAR, J

MAY 18, 2023/ib



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