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

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Reserved on: 18.11.2022
Pronounced on: 03.02.2023

+ **MAC.APP. 299/2013**

NATIONAL INSURANCE CO LTD Appellant

Through: Mr. Pankaj Seth, Advocate

versus

VANDANA & ORS Respondents

Through: Ms. Kiran Suri, Sr. Advocate
with Mr. Purvesh Buttan,
Ms. Aishwarya Kumar,
Mr. Prateek Narwar and
Ms. Vidhushi Garg,
Advocates

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal has been preferred by the Appellant under Section 173 of the Motor Vehicles Act, 1988 (*'the Act'*) for setting aside the award dated 21.12.2012 (*'Impugned Award'*) passed by the Presiding Officer, Motor Accident Claims Tribunal (SE-01), Saket, New Delhi. Vide the impugned Award, learned Claims Tribunal was pleased to award a compensation of Rs. 5,36,032/- along with an interest @ 9% per annum in favor of the Claimants (Respondent Nos.1 to 4) from the date of filing of the Claim petition till the date of issuance of notice under Order XXI Rule 1 of the Civil Procedure Code. Learned Claims

MAC.APP. 299/2013

Page 1 of 25

Tribunal further directed the Appellant herein to pay the said compensation amount at the first instance and granted recovery rights in favor of the Appellant against Respondent Nos.5 & 6 (Driver & Owner)

2. The Appellant herein is challenging the impugned award limited to their liability to pay the compensation, as according to the Appellant, the offending vehicle was not insured with them at the time of the accident. It is the case of the Appellant that the insurance policy produced by the Claimants was a forged document and hence the Appellant has no liability to pay the insured amount.
3. On 20.03.2000, the deceased was travelling in a two-wheeler bearing number DL 3 ST 5261 along with his two friends when he was intercepted by a TATA bus, driven by Shri Manoj Lal/Respondent No.5, bearing registration No. DL-IP-6419. The bus took a sudden right turn without any indication, as a result of which the scooter of the deceased collided with the offending bus. The said offending bus ran over the deceased and caused his sudden death. The deceased, Mr. Arvind Kumar was survived by his widow, minor son and his parents, who are the Respondent Nos. 1 to 4 in the present appeal.
4. Respondent Nos.1 to 4 had approached the learned Claims Tribunal to raise their claims against the owner (Respondent No.6), driver (Respondent No.5) and insurer (Appellant) of the offending vehicle. As per the insurance policy produced by Respondent Nos.1 to 4, the said policy was valid till 11.04.2000.

5. The Appellant filed their written statement alleging that the insurance policy produced by the Claimants was a forged document. It was also alleged that on the forged cover note, the date of expiry of the insurance policy was mentioned as '11.04.2000' in order to cover the risk, i.e, the date of accident, 20.03.2000. According to the Appellant, Insurance Policy No. 354802/98/6703037 in respect of the offending vehicle (vehicle No. DL-1P-6419) was issued to Respondent No.6/Shri Ram Dutt Sharma for the period from 12.11.1998 to 11.11.1999 on a premium of Rs.9,415/-. The vehicle was under a hire purchase agreement with M/s. Basist Leasing & Financing Co. Ltd. from 20.04.1999. Hence, subsequent to the issuance of the original policy, Respondent No.6 had given a consent in writing to the Appellant for endorsing the word '*Hire Purchase*' in the policy. At the request of Respondent No.6, the Appellant issued a cover note bearing No. 863687 on 26.04.1999 for the period from 26.04.1999 to 11.11.1999 endorsing the word '*Hire Purchase*' therein. Thereafter, Respondent No.6 approached the Appellant on 28.04.1999 for conversion of 'act only policy' to a 'package policy'. In order to convert the same, the Appellant charged an additional insurance premium of Rs.2,317/-. Respondent No.6 submitted a cheque bearing No. 534767 for Rs. 2,317/- for a period of 98 days (from 28.04.1999 to 11.11.1999). However, the said premium cheque issued had bounced and hence the said conversion of the insurance policy was cancelled vide policy cancellation letter dated 21.05.1999. According to the Appellant,

the insurance policy was valid only till 11.11.1999 whereas the accident occurred on 20.03.2000. Hence, in view of the same, the Appellant submitted that it has no liability to pay compensation, as on the date of accident the offending vehicle was not insured with it.

6. Respondent No.5 (Driver) of the offending vehicle was served through publication, but he failed to appear before the learned Claims Tribunal and hence was proceeded ex-parte. Respondent No.6 (Owner) filed written statement stating that he had already sold the offending vehicle to one Shri. Ram Kumar. Hence on the said basis, learned Claims Tribunal initially impleaded Sh. Ram Kumar as Respondent No.4 before the learned Claims Tribunal. However, later the learned Claims Tribunal reviewed its own order and deleted Sh. Ram Kumar from the array of parties on the ground that the alleged sale documents produced by Respondent No.6 (Owner) '*prima facie does not represent a sale transaction*'. After filing the written statement, Respondent No.6 stopped participating in the proceedings before the learned Claims Tribunal and hence Respondent No.6 was also proceeded *ex-parte*.
7. Based on the pleadings of the parties, the learned Claims Tribunal had framed the following issues:

“(1) Whether the deceased received fatal injuries in an accident which took place on 20.03.2000 due to rash and negligent driving of vehicle No.DL-IP-6419 driven by respondent No.1, owned by respondent No.2 and insured with respondent No.3?”

(2)Whether respondent no.3 is not liable to pay compensation on account of the preliminary objections taken by it in its written statement?

(3)Whether the petitioners are entitled for compensation? If so, to what amount and against which of the respondents?

(4)Relief ”

8. Mr. Prakash Chand and Ms. Vandana, the father and the wife of the deceased testified as PW1 and PW2 respectively. The Appellant examined Shri Amrit Lal Mehra, Sr. Asstt. M/s. National Insurance Company Ltd. as R3W1 and Shri V.D. Mathur, Branch Manager, M/s. National Insurance Company Ltd as R3W2. Both the owner and driver remained *ex-parte* and no evidence was led on their behalf.
9. After examining the evidence on record, the learned Claims Tribunal held that the Appellant *'has not been able to establish any forgery or fabrication'* in the Insurance policy and also failed to inform the registering authority regarding the cancellation of the insurance policy. Since an insurance policy once issued will have overriding effect on any other law being in force, the learned Claims Tribunal held that the Appellant insurance Company shall be liable to indemnify the Claimants. However, learned Claims Tribunal took cognizance of the fact that the cheque towards the premium for the insurance policy was dishonoured which thus led to the cancellation of the policy. Hence, in view of the same, the learned Claims Tribunal vide the impugned award, directed the Appellant to compensate the legal representatives of the deceased and in return gave them recovery

rights against the driver and the owner of the offending vehicle. The learned Claims Tribunal awarded compensation under the following heads:-

Head	Amount
Pecuniary Heads	
Loss of Dependency	Rs.4,81,032/-
Funeral Expenses	Rs. 10,000/-
Loss of Estate	Rs. 10,000/-
Non-Pecuniary Heads	
Loss of Love and Affection	Rs.25,000/-
Loss of Consortium	Rs. 10,000/-
TOTAL	Rs.5,36,032/-

10. Being aggrieved by the impugned Award, the Appellant is challenging the Award to the limited extent of their liability to indemnify the Claimants.

SUBMISSIONS OF THE APPELLANT

11. Mr. Pankaj Seth, learned counsel appearing for the Appellant submitted that the cover note presented before the learned Claims Tribunal was a forged document to misrepresent the validity period of the said note to maliciously allow the Respondents to raise claims before the Appellant despite the expiry of the insurance coverage. It was the contention of Mr.Seth that the learned Claims Tribunal failed to take notice of this important fact while determining the liability of the Appellant.

12. It was averred by the learned counsel for the Appellant that Insurance Policy No. 354802/98/6703037 & cover note bearing number 744366 was issued for the period from 12.11.1998 to 11.11.1999. The word 'Hire Purchase' in the policy was endorsed on 20.04.1999. It was on the request of Respondent No 6, a fresh cover note bearing no.863687 was issued on 26.04.1999 to include the hypothecation endorsement in favour of M/s. Basist Leasing and Financing Company Ltd.
13. Learned counsel for the Appellant further contended that the fresh cover note was issued for the period 26.04.1999 to 11.11.1999 and hence the said cover note cannot be extended to provide protection on the date of the accident i.e. 20.03.2000. There was no contract between Respondent No. 6 and the Appellant at the time of the accident. Therefore, the Appellant cannot be held liable to compensate the Claimants for an accident that took place much after the expiry of the insurance policy.
14. Learned counsel for the Appellant further submitted that subsequent to the issuance of the cover note, Respondent No. 6 approached the Appellant to convert the third-party insurance into a comprehensive policy. An additional premium amount of Rs. 2317/- for the comprehensive policy was paid by the Respondent No.6 vide cheque no 534667. This was only for the balance 198 days starting from 28.04.1999 till 11.11.1999. It was asserted that this payment was made solely for the conversion of the policy and not for the extending the period of

coverage. The cheque for the payment of premium was dishonoured and this led to the cancellation of the conversion of the policy w.e.f 21.05.1999.

15. The assertion that the premium for the comprehensive policy was only for a period of 198 days was accompanied by calculations to show that the annual premium for the said comprehensive policy would have been Rs.4,113/- and a prorata premium for a period of 198 days was charged at Rs. 2,317/-.
16. It was further contended by Mr. Seth that the learned Claims Tribunal refused to accept the submissions on forgery as the Appellants had taken no criminal action against the Respondents for the said forgery. Mr. Seth submits that the forgery took place only on the document submitted before the learned Claims Tribunal and hence the forgery is with the Court and not with the Insurance Company. Respondent No 6 has neither denied this submission nor has participated in the proceedings before the learned Claims Tribunal which makes the submission on forgery un rebutted. It is the duty of the insured party to contest the case made by the insurer.
17. It was further averred that the Appellant desisted from taking any action against Respondent No 6 for forgery as the matter was subjudice before the learned Claims Tribunal.
18. Reliance was placed on ***Oriental Insurance Co Ltd Vs Vinod Kumar, 2007 (96) DRJ 483*** wherein it was held that the insurer is not liable under a cover note for the entire period of the policy mentioned, if the said cover note is not converted into a policy

within the stipulated period. It was contended that since the cover note was not converted into a policy, there can be no liability on the insurer for any accident caused by the offending vehicle.

19. With these submissions, the learned counsel for the Appellant prays for setting aside of the impugned Award qua their liability.

SUBMISSIONS OF THE RESPONDENT

20. Ms. Kiran Suri, learned Senior Advocate appearing for Respondent Nos. 1 to 4 (the legal representatives of the deceased) condensed the dispute into two issues. The first being the one on forgery, for which the learned counsel had submitted that the onus is on the Insurance Company to prove.
21. The second issue pertained to the issuance of two policies by the same insurer for the same offending vehicle. Analogous to the submissions before the learned Claims Tribunal, the learned senior counsel for Respondent Nos.1 to 4 submitted that no request was made by the owner of the offending vehicle for the issuance of a new policy.
22. It was also brought to the attention of this Court that the sum insured in the policy is Rs. 2,50,000/-, whereas the insurer has calculated the premium of Rs. 2317/- from a sum of Rs.2,70,000/-. Had the premium been calculated for a period of 198 days on insured sum of Rs. 2,50,000/-, the premium would not have amounted to Rs. 2,317/-. The witnesses of the Appellant have failed to address this erratum.

23. Akin to the submission made by the Appellant, it was conceded that no policy has been issued for the cover note bearing No.863687. It is this cover note that covers the date of the accident.
24. Learned senior counsel had pointed out certain facts which were in contrariety to the submissions made by the counsel for the Appellant. Ex. R3W1/2 contains a copy of the Insurance Policy No. 354803/6703037/1998 and Ex. R3W1/R4 contains a copy of the Insurance Policy No. 354802/6703037/1998. Though, R3W-1/Shri Amrit Lal Mehra had stated the two policies mentioned above are one and the same as the numbers '02' and '03' only indicate the branch code, no reasoning was provided for the existence of two policy documents with different branch codes.
25. It was the case of the counsel for the Appellant that Section 147(4) of the Act must not be read in a restrictive manner. Sub-sections 4 and 5 of Section 147 of the Act must be read together to give meaning to the intent of third-party insurances. Third-party insurance is not restricted as an obligation towards the insured and rather is an obligation towards all third parties in the nature of a statutory liability. The relevant sub-sections have been extracted below:-

“(4)Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has

been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.”

26. Learned senior counsel for Respondent Nos.1 to 4, placed reliance on the judgement of the Hon’ble Supreme Court in ***New India Assurance Co., Shimla Vs Kamla And Ors*** reported as **(2001) 4 SCC 342**, which dealt with averments on a forged licence of the respondent where it was observed as follows:-

“15. Learned counsel for the respondents next contended that even if the driving licence of 8th respondent is proved to be not genuine it would not be enough for absolving the Insurance Company from liability. On the other hand, learned counsel for the appellant Insurance Company, banking on the provisions contained in Section 149 of the Act, submitted that the insurer will get complete exoneration from liability on proof of breach of any one of the conditions of the policy of insurance. We have to examine this contention as a decision on the same is necessary before deciding whether the appellant Insurance Company must be given a further opportunity to substantiate that the document is a forged one.

16. Chapter XI of the Act contains provisions for insurance of motor vehicles against third party risk. Sections 145 to 164 are subsumed in the said chapter. Section 146 of the Act imposes a prohibition against use of a motor vehicle in public place unless the vehicle is covered by a policy of insurance complying with the requirements enumerated in the Chapter. Some categories of vehicles are exempted from the aforesaid

compulsion, but we are not concerned with any such category now.

*17. The details regarding the requirements of the policy including the limits of liability to be insured are enumerated in Section 147. Sub-section (3) of it states that **a policy shall be of no effect for the purposes of that Chapter unless and until a certificate of insurance is issued by the insurer in the prescribed form in favour of the insured.** It is in Section 149 that provisions, relating to the duty of the insurer for satisfying the judgments and awards in respect of third party claims, are incorporated. Sub-section (1) says that the insurer shall pay to the person entitled to the benefit of a judgment or award as if the insurer were the judgment debtor in respect of the liability, when any such judgment or award is obtained against the insured in whose favour a certificate of insurance has been issued. Of course, the said liability of the insurer is subject to the maximum sum assured payable under the policy.*

18. Section 149(2) of the Act says that notice regarding the suit or other legal proceedings shall be given to the insurer if such insurer is to be fastened with such liability. The purpose of giving such notice is to afford the insurer to be made a party in the proceedings for defending the action on any one of the grounds mentioned in the sub-section. Among the multiplicity of such grounds the one which is relevant in this case is extracted below:

“149 (2) (a) That there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification.”

xxx

xxx

xxx

21. A reading of the proviso to sub-section (4) as well as the language employed in sub-section (5) would indicate

that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This means, the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. To repeat, the effect of the above provisions is this: When a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.”

(emphasis supplied)

27. Learned senior counsel further contended that as can be evinced from Section 145 of the Act, a cover note is a valid certificate of insurance as required in ***Kamla (supra)***.

28. Further, the learned senior counsel has referred to the judgment in ***National Insurance Company Ltd Vs Abhaysing Pratapsing Waghela & Ors***, reported as **(2008) 9 SCC 133:-**

“15. An insurance company, however, is entitled to deny its liability to indemnify the owner of the vehicle on limited grounds as provided for under sub-section (2) of Section 149 thereof.

16. One of the grounds which are available to the insurance company to deny its statutory liability as envisaged under sub-section (2) of Section 149 of the Act is that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particulars.

17. Indisputably, the first respondent is a third party in relation to the contract of insurance which had been entered into by and between the appellant and the owner of the vehicle in question. We have noticed hereinbefore that a document was produced before the Tribunal. Even according to the appellant, although it was only a Motor Input Advice cum Receipt, it contained the Cover Note No. 279106. We, therefore, have to suppose that a Cover Note had, in fact, been issued. If a Cover Note had been issued which in terms of clause (b) of sub-Section 1 of Section 145 of the Act would come within the purview of definition of certificate of insurance; it also would come within the purview of the definition of a insurance policy. If a Cover Note is issued, it remains valid till it is cancelled. Indisputably, the insurance policy was cancelled only after the accident took place. A finding of fact, therefore, has been arrived at that prior to the deposit of the premium of insurance in cash by the owner of the vehicle, the cover note was not cancelled.

18. It is in the aforementioned situation, we are of the opinion, that the judgment of the High Court cannot be faulted. No doubt, a contract of insurance is to be governed by the terms thereof, but a distinction must be borne in mind between a contract of insurance which has been entered into for the purpose of giving effect to the object and purport of the statute and one which provides for reimbursement of the liability of the owner of the vehicle strictly in terms thereof. In that limited sense, a contract of insurance entered into for the purpose of covering a third party risk would not be purely contractual. We may place on record that an ordinary contract of insurance does not have a statutory flavour. The Act merely imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act as also the Contract. So far as the liability of the insurance company which comes within the purview of Sections 146 and 147 is concerned, the same subserves a constitutional goal, namely, social justice. A contract of insurance covering the third party risk must, therefore, be viewed differently vis-à-vis a contract of insurance qua contract."

29. Thus, irrespective of whether the insurance policy is fake or not the insurer is bound to pay the third party, the amount they are

entitled to. Nevertheless, this does not leave the insurer remediless as if they very well have their recovery rights.

30. With these submissions, learned senior counsel for Respondent Nos.1 to 4 prayed for the dismissal of the present Appeal.

LEGAL ANALYSIS

31. This Court had heard the arguments advanced by the learned counsels for both the parties and carefully perused the documents on record and Judgments relied upon by the parties.

32. In the present appeal, the Appellant is challenging its liability to compensate the legal representatives of the deceased as according to the Appellant, the offending vehicle was not insured with the Appellant at the time of the accident. Hence the attendant point of consideration in this case is whether there existed a valid insurance cover on the offending vehicle at the time of the accident. Subject to this being established in the affirmative, the Appellant will be liable to compensate the legal representatives of the deceased accordingly.

33. It is the case of the Appellant that the insurance cover for the offending vehicle was valid only upto 11.11.1999. Hence the burden of proof was on the Appellant to prove the said fact. In order to discharge the said burden, the Appellant placed on record the cover note bearing No. 744366 (Ex. R3W-1/1) and corresponding Insurance Policy No. 354803/6703037/1998 (Ex. R3W-1/2). Both these documents show that the original Insurance Policy was issued by the Appellant for the period from 12.11.1998 to 11.11.1999. The Appellant has also placed on

record the relevant pages of Motor U/W Register (Ex. R3W-1/4) which shows that the Insurance Policy No.6703037 against cover note No. 744366 dated 11.11.1998 was issued to Respondent No.6 by charging a premium of Rs.9,415/-. All these documents show that the original Insurance Policy No.6703037 was issued by the Appellant to Respondent No.6 qua the offending vehicle for the period from 12.11.1998 to 11.11.1999. No evidence has been led by the Respondents to challenge this position. Hence the Appellant successfully proved on record that the original Insurance Policy was issued by the Appellant to Respondent No.6 qua the offending vehicle and the same was valid for the period from 12.11.1998 to 11.11.1999.

34. Now the next question to be examined is whether this policy was ever extended upto 11.04.2000 or not.
35. Subsequent to the issuance of the original Insurance Policy, during the currency of the insurance policy period, hypothecation agreement was entered into between Respondent No.6 & M/s Basist Leasing & Financing Co. Ltd. The said hypothecation agreement was endorsed in the Registration Certificate of the offending vehicle on 20.04.1999 (Mark-A). Thereafter, Respondent No.6 and M/s Basist Leasing & Financing Co. Ltd applied in writing to the Appellant for endorsing the word '*Hire purchase*' in the Insurance Policy. Both these letters were proved on record as Ex. R3W-1/R2 & Ex. R3W-1/R3. Perusal of these letters shows that Respondent No.6 requested only for the H.P. endorsement in the original

policy. There was no request for extending the term of the policy. In pursuance of the said request, the Appellant issued a cover note bearing No. 863687 on 26.04.1999 (Ex. P-4). Further the Appellant placed on record the Motor U/W register (Ex.R3 W-1/5) which shows that cover note bearing No. 863687 dated 26.04.1999 was issued to Respondent No.6 for NIL premium. In this register also there is no entry to show that the insurance cover was ever extended beyond the original time period.

36. The Appellant examined R3W-1 and R3W-2 to substantiate its case. R3W-1 was the officer who was involved during the issuance of the original policy and the subsequent cover note bearing No. 863687 dated 26.04.1999. Hence, it is profitable to refer to the evidence of R3W-1/Shri. Amrit Lal Mehra:

“Chief Examination of Sh. Amrit Lal Mehra

f. The deponent is also placing on record the relevant pages of Motor U/W Register which is in the handwriting of Deponent. The page No. 110 & 111 is exhibited as Ex. RWI/4. This shows that policy No.6703037 against Cover Note No.744366 dtd. 11.11.98 was issued to the Insured Ram Dutt Sharma by charging Rs.9415/-; Page No.228 & 229 at No.1994 dtd.26.4.99-it depicts that C/N No.863687 dtd.26.4.99 was issued by charging NIL premium for inclusion of HPA & SI. No.2000 dtd. 28.4.99 exhibited as EXR3W1/5 which shows that End. No. 19 was issued under policy no.6703037 by charging Rs.2317/- for conversion from Act to Comprehensive policy on the request of the Insured. The photocopy of E-19 dtd.28.4.99 under policy No.354803/6703037/98 is Mark as Mark D- this shows that an amount of Rs.2317/- was charged from the Insured on pro-rata basis for the balance 198 days. Page No.248 & 249-exhibited as EXR3W1/6 this shows that Cancellation Endorsement was passed due to cheque dishonour, the same is in the writing of the Deponent. The purpose of producing U/W Register is that all the entries/work/endorsements etc. were issued against

policy No.6703037 which is valid for the period 12.11.98 to 11.11.99.

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- k) *That the document mark 'Z' relied by the petitioner and admitted by Sh. V.D. Mathur, B.M. in the court on 28.3.2005 was in the handwriting of the Deponent. It is stated that when the R-2 came to the Ins. Co. for inclusion of the name of Financer i.e. Basis Leasing & Finance Co. was included by charging NIL premium and when he again approached on 28.4.1999 as per Ex.P-3 for conversion of Act policy into comprehensive policy, on the same cover Note premium was mentioned for Rs.2317/-and when it was found that cheque was dishonoured; on the same office copy the mark CANCELLED was given.*
- (l) *That as per Ex.P-3 dtd. 11.7.05, the Deponent had written E-19 Cheque Rs.2317/- and signed dtd.28.4.1999. Further again it is in the handwriting of the Deponent (2140,E-36/cancellation endorsement Rs.(-)2317/- sd/-=21.5.99*
- m) *The Petitioner had placed on record the printed C/N No.863687 with changed dates 26.4.99 to 11.4.2000. The Deponent wishes to clarify that C/N had five pages in all. Two copies are printed and rest of the three are plain copies. Two printed copies were given to the insured and three copies remained with Ins. Co. Out of three copies two copies remains in the C/N Book and One copy retain in the U/W docket. The admitted C/N i.e. Mark Z is the office copy of plain C/N. How it is has reached to the hands of Petitioner is not known. The Deponent has explained that how the remarks were made on the mark Z. Hence there should not be any confusion between the printed & Plain C/N bearing the same Number.*
- n) *That our defending counsel had sent notice under Order 12, Rule 8 C.P.C. dtd.31.8.04 under registered post to Sh. Ram dutt Sharma for production of original cover Note no.744366 dtd .11.11.98 for the period 12.1198 to 11.11.99 and its corresponding policy bearing no.354803/1998/6703037 for the period 12.11.98 to 11.11.99 in question and also for original cover Note*

bearing no.863687 which was issued on 26.4.99 and valid upto 11.11.99 with endorsement of H.P Agreement. Notice dtd.31.8.04 was also sent to Director/Financier Basist Leasing & Finance Co. Ltd. for production of original cover note bearing no.863687 which was issued on 26.4.99 and valid upto 11.11.99 with endorsement of H.P. agreement under Regd. post."

37. The said witness was cross-examined thoroughly, however, this Court finds that there is no discrepancy in his evidence. In addition, the Appellant examined Shri V.D Matur, Branch Manager as R3W-2. The said witness was also consistent in his evidence that the Insurance Policy bearing No. 6703037 was valid only upto 11.11.1999.
38. It was the consistent case of the Appellant that the original policy was valid for the period from 12.11.1998 to 11.11.1999. The time period of an Insurance Policy cannot be extended in the middle of the said policy as per the Statute, practices & principles of insurance. Further, R3W-1 explained in detail the calculation of the premium based on the tariffs. The evidence of the Appellant's witness remained unrebutted. The Appellant successfully proved on record that the cover note bearing No. 863687 dated 26.04.1999 was issued only for making HP endorsement. The said cover note was not issued for extending the time period for the original policy bearing No. 6703037.
39. Respondent Nos.1 to 4 placed on record a copy of the insurance cover note bearing No. 0863687 issued on 26.04.1999. As per the said document, the Insurance Policy was valid till 11.04.2000. This Court examined the said cover note carefully.

The insurance policy number of this cover note is not visible. The perusal of this document shows that this cover note was issued to Respondent No.6 qua the offending vehicle, and it mentions the name of M/s Basist Leasing & Finance Company Ltd as financier. It is the case of the Appellant that this cover note is a forged document. The Appellant already proved on record the original Insurance Policy bearing No. 6703037 and cover note bearing No.863687. From the evidence adduced by the Appellant, it is evident that the original Insurance Policy bearing No. 6703037 was valid only upto 11.11.1999 and the same was never extended. The Appellant discharged their burden qua the validity of the Insurance Policy bearing No.6703037. It is the case of the Respondents that the Insurance Policy was valid till 11.04.2000. Therefore, the burden is on the Respondent No.6/Respondent Nos.1 to 4 to prove this fact. Respondent No.6 did not appear before the learned Claims Tribunal to contest the case. The same is the position even in the present appeal. Hence the evidence led by the Appellant with respect to the validity of the Insurance Policy remained unrebutted qua Respondent No.6. Further the perusal of the Lower Court Record shows that the Appellant has given notice under Order XII Rule 8 CPC to Respondent No.6 as well as M/s Basist Leasing & Finance Company Ltd for the production of original cover note bearing No.863687. However, no such document was produced. Hence adverse inference can be drawn against Respondent No.6 to the effect that Respondent No.6 does

not have the original cover note bearing No.863687. Respondent No.1 & Respondent No.3 are third parties to the Insurance Policy and hence their statements are not sufficient to prove the validity of the Insurance Policy.

40. In view of the detailed discussion herein above, this Court has no hesitation in holding that the original Insurance Policy bearing No. 6703037 was valid only upto 11.11.1999 and the same was never extended. Further, the Respondents failed to prove that there is any valid insurance cover as on the date of the accident.

41. Learned counsel for the Respondent vehemently argued that the Appellant issued two Insurance Policies for the same vehicle, i.e. 354802/6703037/1998 (Ex.R3W1/R4) & 354803/6703037/1998 (Ex.R3W1/2). In this regard, it is important to refer to the cross-examination of R3W-1:

“Qns. Can you explain the difference of the policy no. as 354802/6703037/1998 in Ex.R3W-1/R-4 and the no. of the insurance policy as 354803/1998/6703037 in Ex.R3W-1/2?”

Ans. The actual policy no. is 6703037 and the other numbers represents the year and code i.e. 35 represents the Delhi Regional Code, 48 represents the Division Office and 02 and 03 represent the Branch code.

Qns. Can you explain the DRA numbers at Points-A and the difference of numbers in Ex.R3W-1/R-4 and Ex.R3W-1/R-2?”

Ans. I do not know what DRA stands for. The earlier policies and the copies were prepared manually before the computerization of our records. Whenever a copy of insurance policy was required,

the details were filled by hand on the stationary supplied by the Regional Office and probably because of the said reason there is change in DRA number but the policy number 6703037 would remain same in all the copies.”

42. This Court finds the explanation provided by R3W-1 as satisfactory. In any case, in both these policies, the insurance cover was valid till 11.11.1999. Hence no benefits can be extended to Respondent Nos.1 to 4 on the basis of the said discrepancies.
43. Learned senior counsel further pointed out that the Appellant calculated the additional premium of Rs. 2,317/- based on a sum of Rs. 2,70,000/- whereas the sum insured in the policy was Rs.2,50,000/-. This Court finds the said objection is without any merit as irrespective of the calculation of addition premium, the Insurance Policy was valid only upto 11.11.1999. The additional premium was only for the conversion of the ‘act only’ policy to a comprehensive policy. Hence the said calculation will not extend the time period of the original policy.
44. After carefully examining the documents and evidence on record, this Court is of the considered view that the original policy bearing No. 6703037 and cover note bearing No.863687 was valid only till 11.11.1999. There was no document on record to show that the Insurance Policy was ever extended beyond 11.11.1999. Hence as on the date of the accident, i.e., 20.03.2000, the offending vehicle was not insured and therefore the Appellant is not under an obligation to indemnify Respondent Nos.1 to 4. However, the Claimants can recover the

compensation amount from Respondent Nos. 5 & 6 (Driver & Owner).

45. Though the Respondents have not raised any disputes on the sum awarded by the learned Claims Tribunal, it is the duty of this Court to award the compensation in line with the prevailing law. In the Judgment of *National Insurance Company Limited vs Pranay Sethi* reported as (2017) 16 SCC 680, the Hon'ble Supreme Court has held that for the conventional heads, namely, 'Loss of Estate', Loss of Consortium' and 'Funeral Expenses' amount of compensation is fixed at Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-, respectively with an increase of 10% after a period of 3 years. Since the deceased was of the age of 30 years at the time of his death, learned Claims Tribunal rightly applied the multiplier 17 in terms of dicta laid down in case of *Sarla Verma & Ors. Vs DTC & Anr.* reported in (2009) 6 SCC 121. At the time of the death of the deceased, he had 4 dependents (wife, minor son and parents) and hence the learned Claims Tribunal rightly deducted 1/4th of the income of the deceased towards the personal expenses in terms of *Pranay Sethi (Supra)*.
46. The learned Claims Tribunal awarded future prospects at the rate of 30% per annum. However, since the deceased was self-employed and aged 30 years at the time of his demise, in terms of Para 59.4 of the *Pranay Sethi (Supra)*, he must be awarded future prospects at the rate of 40%.
47. There would be no change in the rate of interest awarded by the learned Claims Tribunal.

48. In view of the above discussion, the compensation awarded vide the impugned Award dated 21.12.2012 is modified to the following extent:

- i. '*Loss of dependency*' is calculated as
 1. Rs. 2419/- + 40% (Rs. 967.6/-) = Rs. 3,386.6/-
 2. Rs. 3386.6/- less 1/4 deduction (Rs 846.65/-) = Rs.2539.95/-
 3. Rs. 2539.95 X 12 X 17 = **Rs. 5,18,149.8/-**
- ii. '*Loss of Consortium*' is computed as
Rs. 44,000 X 4 = **Rs. 1,76,000/-**
- iii. '*Loss of Estate*' is quantified as **Rs. 16,500/-**
- iv. '*Funeral Expenses*' is quantified as **Rs. 16,500/-**
- v. Compensation under the head '*Love and Affection.*' = Nil.
- vi. Total compensation to be paid to respondent/claimant is; **Rs. Rs. 5,18,149.8/- + Rs. 1,76,000 + Rs. 16,500/- + Rs. 16,500/- = Rs. 7,27,149.9/-.** (Rounded as **Rs.7,27,150/-**)

49. Accordingly, the compensation granted by the learned Claims Tribunal is enhanced from **Rs. 5,36,032/-** to **Rs. 7,27,150/-**.

50. Perusal of the order sheets reveals that this Court vide order dated 05.04.2013, directed the Appellant to deposit the complete awarded amount before this Court and further directed the Registry to release 60% of the deposited amount to Respondent Nos.1 to 4 as per the terms & conditions fixed by the learned

Claims Tribunal. The record further reveals that the service was effected on Respondent Nos.5 & 6 through substituted service and there was no representation on behalf of these Respondents in the present proceedings. Since 60% of the deposited amount is already released to Respondent Nos.1 to 4, this Court grants recovery rights in favour of the Appellant to recover the said 60% of the deposited amount from Respondent Nos.5 & 6. Respondent Nos. 1 to 4 are also entitled to recover the enhanced compensation along with balance 40% of the original awarded amount with up-to-date interest from Respondent Nos.5 & 6 in accordance with law. On the recovery of the said amount, same is to be distributed in the same terms as mentioned in the Award dated 21.12.2012.

51. The Appellant is entitled for the release of the balance 40% of the deposited amount with up-to-date interest accrued thereon. The Appellant is also entitled for the release of the statutory deposit.
52. The present Appeal is disposed of in the above terms. No order as to costs.

GAURANG KANTH, J.

FEBRUARY 03, 2023