



2023:DHC:7226



\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 03.10.2023***+ **MAC.APP. 1031/2018 & CM APPL. 48626/2018****M/S NATIONAL INSURANCE COMPANY LTD** AppellantThrough: **Mr.Manoj Bhandari, Adv.**

versus

NIRMALA & ORS

..... Respondents

Through: **Mr.S.N. Parashar, Adv.****CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed challenging the Award dated 20.09.2018 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal (South-West District), Dwarka Courts, New Delhi (hereinafter referred to as 'Tribunal') in MACP No.1406/2016 titled as *Nirmala & Ors. v. Joginder Singh & Ors.*.
2. It was the case of the claimants before the learned Tribunal that on 29.12.1998, at about 9:45 am, the deceased, that is, Kunj Bihari, met with an accident while he was standing on the corner of the road. The said accident occurred when the driver of the truck bearing registration no. DL 1 G 4185 (hereinafter referred to as 'offending vehicle'), being driven in a rash and negligent manner, hit the deceased, as a consequence of which, he fell and sustained fatal injuries. Thereafter, he was rushed to DDU Hospital where he was declared as brought dead.

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 07.10.2023

14:30:27



MAC.APP. 1031/2018

Page 1 of 7



2023:DHC:7226



3. The limited challenge of the appellant to the Impugned Award is that though the learned Tribunal found the insurance cover note produced by the claimants to be interpolated and not the one which covers the period of the accident, the liability to pay the compensation amount has still been fastened on the appellant with only a right to recover the same from the owner of the offending vehicle.
4. The learned counsel for the appellant submits that through the testimony of Mr. Bharat Ratan Ghai, Administrative Officer with the appellant company (R3W1), it had been proved that the insurance policy in favour of the respondent no.5 herein, that is the Owner of the offending vehicle, was valid only for the period from 01.01.1997 to 31.12.1997. The date of accident was 29.12.1998. As on the date of the accident, the offending vehicle was not insured by the appellant herein, he submits that the liability to pay the compensation to the claimants, that is, the respondent nos.1 to 3 herein, could not, therefore, have been fastened on the appellant.
5. On the other hand, the learned counsel for the respondent nos.1 to 3 submits that the liability to pay the compensation has rightly been fastened on the appellant, and the appellant has also been given a right to recover the same from the respondent no.5 herein. He submits that the appellant failed to produce the carbon copy of the cover note of the insurance policy, which it purports to have been interpolated. He submits that, in the absence of the carbon copy of the same, the case of the appellant could not be believed.

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 07.10.2023

14:30:27



MAC.APP. 1031/2018



2023:DHC:7226



6. I may herein note that the respondent no.5, since deceased, had not entered appearance nor has he been represented by his legal representatives in spite of notice being issued by this Court. The respondent no.5 also did not enter appearance before the learned Tribunal and was proceeded *ex parte*.
7. A bare perusal of the Cover Note (Ex.R3-W1/2) shows that the period of the Cover Note has been interpolated with the period being changed from 01.01.1997 to 31.12.1997 to 01.01.1998 to 31.12.1998. The date of issuance of the same has also been interpolated with seven being converted into eight, that is 01.01.1997 being converted into 01.01.1998.
8. The appellant, in support of its submission that the Cover Note has been interpolated and did not cover the period of the accident, had produced R3W1 as a witness who, along with his evidence by way of affidavit (Ex.R3W1/A), produced copy of the Premium Register, Daily Collection Register for 01.01.1997, and Cover Note Register along with the date and Cover Note number, vehicle number, mode of payment, and other particulars for the period from 26.12.1996 to 14.01.1997 (Ex.R3/W1/3 (colly)). The said documents show that the Cover Note in question was relatable for the period from 01.01.1997 to 31.12.1997. Merely because the appellant could not produce the carbon copy of the Cover Note in the evidence, that was being recorded 20 years after the date of the accident, an adverse inference in this regard cannot be drawn against the appellant.

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 07.10.2023

14:30:27



MAC.APP. 1031/2018



2023:DHC:7226



9. In the present case, the learned Tribunal has also agreed with the appellant on the Cover Note being interpolated and thereby admitting that the insurance policy was not issued for the period of the accident. I may quote the relevant observation of the learned Tribunal as under:

“19. LIABILITY

The offending vehicle was being driven by R-1 Joginder Singh, owned R-2 Surender Singh and insured with R-3/National Insurance Company Ltd. at the time of accident and as such, respondent no. 3/National Insurance Company Ltd, being the 'principal tortfeasor', is liable to pay the awarded amount.

Further in the present case, it is being submitted on behalf of the R-3/Insurance company that the cover note in respect of the offending vehicle was manipulated by the insured by overwriting by which he converted the date 01.01.1997 to 31.12.1997 to 01.01.1998 to 31.12.1998. It is further stated that driver of the offending vehicle was not holding a valid and effective DL and that the offending vehicle was also not having valid permit at the time of accident and as such, R-3/ Insurance company was not liable to pay compensation. In this regard, R-3/Insurance company has examined R3W1 Bharat Rattan Ghai, AO, who has filed his evidence by way of affidavit (Ex. R3W1/A), wherein it has been stated the alleged offending vehicle bearing no. DL 1 G 4185 (truck) was insured w.e.f 01.01.1997 to 31.12.1997 and the alleged accident occurred on 29.12.1998 and on the said date, alleged offending vehicle was not insured with the respondent insurance

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 07.10.2023

14:30:27



MAC.APP. 1031/2018



2023:DHC:7226



company. R3W1 further deposed that cover note (Ex. R3W1/2) bearing no. 283197 provided by the petitioners alongwith petition was issued in the name of Surender Singh in respect of offending vehicle bearing no. DL IG 4185 and premium of the insurance of the vehicle was deposited by the insured on 01.01.1997 i.e. for one year which covered the period upto 31.12.1997. R3W1 deposed that cover note provided by the petitioners in which the period of insurance has been shown w.e.f 01.01.1998 to 31.12.1998 has been manipulated and year 1997 has been converted into 1998 in both dates which was false, fabricated and manipulated to grab the claim from the insurance company and as such, respondent insurance company was not liable to pay any compensation to the petitioners.

The important fact is that the aforesaid witness i.e R3W1 have been cross examined on behalf of the petitioners, however nothing material has come on record which could shake the credibility of this witness. Further, the perusal of the record reveals that this witness i.e R3W1 has not been cross examined on behalf of R-1 Joginder Singh and LR's of R-2 Surender Singh, both of whom have chosen to remain absent during the trial of this case and were proceeded against exparte vide order dated 24.8.2016 and 14.11.2014 passed by the Ld. Predecessors of this court. In these circumstances, the above-said testimony of the R3W1 have remained un-controverted qua the genuineness of insurance cover note/ policy. Further, it is pertinent to note here that valid insurance cover note/policy, if any could have been brought on record by respondent no. 1

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 07.10.2023

14:30:27



MAC.APP. 1031/2018



2023:DHC:7226



or LR's of respondent no.2, however, they have chosen to remain absent in this case and in absence thereof, the R-3/National Insurance Co. Ltd shall be entitled to recover the compensation amount (being payable by R-3/ Insurance company to petitioners herein) from R-1 Joginder Singh and LR's of R-2 Surrender Singh, in accordance with law.

Hence, in view of the above. Issue no. 2 is decided accordingly."

10. However, in spite of the above finding that the Cover Note has been interpolated and does not operate for the period of the accident, the learned Tribunal has directed the appellant to pay the compensation to the Claimants and then recover the same from the owner of the Offending Vehicle. I am unable to agree with the said direction of the learned Tribunal. Once it has come to the conclusion that there was no valid insurance policy issued by the appellant for the period of the accident, the appellant could not be made liable to pay the compensation to the respondent nos.1 to 3. For making the appellant liable to pay the compensation, existence of a valid insurance policy issued by the appellant is a pre-requisite. It is only where such a policy is issued by the appellant, that it can be made liable. The same is also evident from a reading of Section 147 (1) of the Motor Vehicles Act, 1988.
11. The Impugned Award to the above extent is, therefore, set aside.
12. For purpose of clarity, it is again reiterated that this order does not, in any manner, preclude the respondent nos.1 to 3 from seeking recovery

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 07.10.2023

14:30:27



MAC.APP. 1031/2018



2023:DHC:7226



of the compensation awarded in their favour by the learned Tribunal, from the respondent nos. 4 and 5 herein.

13. The appeal is allowed to the above extent.
14. The statutory amount deposited by the appellant be released in favour of the appellant along with the interest accrued thereon.
15. In terms of the interim order dated 26.11.2018, the appellant had been directed to deposit the entire awarded amount with the learned Registrar General of this Court. The said amount along with interest accrued thereon be also released in favour of the appellant.
16. The appeal along with the pending application is disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

OCTOBER 3, 2023/ns/rp

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 07.10.2023

14:30:27



MAC.APP. 1031/2018