2024:DHC:9432

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

% ***Date of decision: 27th November, 2024***

\+ **MAC.APP. 154/2024, CM APPL. 14848/2024**

KOTAK GENERAL INSURANCE CO. LTD.

.....Appellant

Through: Mr. Ved Vyas Tripathi, Advocate.

Versus

ANJU & ORS.

.....Respondent

Through: Mr. Anil Dabas, Mr. Praveen Kumar, Ms. Soniya and Mr. Prateek Rai, Advocates for R-1 and R-2.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT *(oral)*

1. *An Appeal under Section 173 of Motor Vehicle, Act, 1988* has been filed by the Appellant/*Insurance Company* against the Award dated 28.11.2023, vide which the *Respondent No. 3-9/ legal heirs* of Late Smt. Salma, have been granted compensation in the sum of Rs.19,27,660/- along with interest @ 9% per annum.

2. The *only ground of challenge* is that the Insurance Company cannot be held liable to pay the Compensation amount since there was misrepresentation by the owner of the Offending Vehicle in obtaining the New Insurance Policy issued by the Appellant. *The owner/ Smt. Anju-Respondent No. 1* produced a fake and forged Insurance Policy of New India

Assurance Company for the previous year, which was accepted by the Appellant to issue genuine Insurance Policy to the Appellant.

3. It is argued that it is a case of misrepresentation and the Appellant/Insurance Company is not liable to pay any compensation.

4. **Submissions heard and record perused**.

5. ***Briefly stated***, on 10.04.2018 at about 9 A.M., Smt. Salma was travelling as a pillion rider on the motorcycle bearing No. UP-37C-0773, being driven by her son-in-law/Shri Irfan Khan, from Mubarakpur Dabas to Balmiki Chowk. When they reached near Ankur Medical Store, Main Mubarakpur Road, they were hit by a Tractor - Farmtrac /Offending Vehicle *bearing No.HR-77-1349* which was being driven at a high speed in a rash and negligent manner, by its *Driver/Surender, Respondent No. 2.* The injuries suffered in the accident, resulted in death of Smt. Salma.

6. The Appellant/ Insurance Company has admitted that there existed a valid Insurance Policy for the offending Tractor at the time of the accident, but the *only ground agitated* is that the Insurance Policy for the previous year was forged and fake. Thus, the Insurance Company had been induced into issuing the current Insurance Policy on mis-representation and fraud and thus, the Insurance Company is not liable to pay the compensation.

7. It is admitted that there existed a valid *Insurance Policy-Ex.R3W1/3* issued by the Appellant/Insurance Company in favour of Respondent No.1, on the date of accident.

8. Pertinently, *R3W1-Shri Amalan Gupta* was examined on behalf of the Appellant, who in his cross-examination had deposed that the current and valid Insurance Policy was issued by the Appellant-Kotak Mahindra General Insurance Company Limited and *was got verified from the previous insurer*

by him when he personally went to the office of the previous insurer at Dera Bassi, Mohali, Punjab. He met Shri Satwinder Singh Branch Manager, who had issued the *Verification Report Ex.R3W1/5.*

9. The witness of the Respondent i.e. R3W1 Shri Amlan Gupta himself has deposed that the earlier Insurance Policy was verified by him from New India Assurance Company and had obtained the Report stating that the earlier Insurance Policy was genuine.

10. However, the Insurance Company has also examined *R3W2-Rahul Verma from New India Assurance Company* who has deposed that in fact the *previous year's Insurance Policy/Ex. R3W2/1* issued by New India Assurance Company, was not in respect of the Offending Vehicle i.e. the agricultural Tractor but was rather in respect of the *Maruti Zen Car No.HR-01-S3838* in the name of Sh. Shinder Pal Singh for the period from 23.06.2017 to 22.06.2018.

11. *It is pertinent to observe that the agent of the Appellant himself had earlier verified the genuineness of the Insurance Policy.* It is only at the stage of the trial that they have now come to know that in fact the Insurance Policy of the same number had genuinely been issued for a Maruti Zen Car and not for the Offending Vehicle. It is evident from the evidence of *R3W1/ Sh. Amalan Gupta* that infact, the Appellant had verified the earlier Insurance Policy from *New India Assurance Company*, which had confirmed the previous year's Policy to be genuine. The Appellant had itself verified the previous year's Insurance Policy and its own inquiry initially found it to be genuine but it is only during the trial that it has been found to be not genuine. No fault can be attributed to the Claimant, for any misrepresentation made by New India Assurance Company.

12. Even otherwise, it cannot be overlooked that the Insurance Policy for the current year in which the accident has taken place, was valid and genuine. The Appellant/Insurance Company cannot avoid its liability in the manner it is sought to be done by way of present Appeal.

13. ***The learned Tribunal has rightly imposed the liability on the Insurance Company to pay the compensation amount.*** There is no merit in the present Appeal, which is hereby dismissed.

14. The Statutory amount deposited, be refunded.

15. The Appeal along with the pending Application(s), if any, stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 27, 2024
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