IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(370)

1. **FAO-5848-2016 (O&M)**

Rajni and another **...Appellants**

Versus

Jamuna Rani and others **.....Respondents**

2. **FAO-2195-2016 (O&M)**

Jamuna Rani and another **...Appellants**

Versus

Rajni and others **.....Respondents**

Date of Decision: - 06.05.2025

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Ashwani Talwar, Advocate,
Mr. Satpal Dhamija, Advocate,
Mr. Deepak Goyat, Advocate,
Mr. Nikhil Sehrawat, Advocate, and
Mr. Gandhari Malhotra, Advocate
for the appellants in FAO No. 5848-2016 and
for respondents No.1 and 2 in FAO No. 2195-2016.

Mr. Sanjiv Gupta, Advocate, and
Mr. Naveen Jhajolia, Advocate
for respondent No.1 and 2 in FAO No. 5848-2016 and
for appellants in FAO No. 2195 of 2016.

Mr. Rajneesh Malhotra, Advocate, and
Ms. Manvi Verma, Advocate
for the respondent No.3 – Insurance Company
in both appeals.

****

<u>VIKAS BAHL, J. (ORAL)</u>

1. Present order would dispose of two appeals. The first

appeal bearing No.FAO-5848-2016 has been filed by Rajni (owner of Maruti Esteem car No.CH-01Z-6393) and Avdesh Bali (driver of the said Esteem car). Challenge in the said appeal is to the award dated 03.12.2015 vide which liability had been fastened upon the present appellants and the insurance company i.e. Future Generali India Insurance Company Limited had been exonerated. Second appeal bearing No.FAO-2195-2016 has been filed by the claimants-Jamuna Rani and Raj Kapoor with respect to the death of their son Gurpreet Arora. In the said case, the prayer is made for modification of the award dated 03.12.2015 and for enhancement of the compensation.

<u>FAO-2195-2016</u>

2. Learned counsel for the appellants/claimants has submitted that the amount of compensation awarded i.e. Rs.34,38,000/- along with interest in favour of the claimants is inadequate and further an amount of Rs.3,30,600/- should be awarded to the claimants.

3. Learned counsel appearing for respondent No.3-Insurance Company has vehemently opposed the said appeal and has submitted that the appeal is meritless and the claimants are not entitled to any enhancement and during the course of arguments has referred to the income assessed by the Motor Accident Claims Tribunal, Faridkot (hereinafter to be referred as "the Tribunal"), which as per the counsel is on the higher side.

4. Learned counsel for the appellants/claimants in view of the objection raised by learned counsel for the Insurance Company seeks to

withdraw the present appeal, to which the counsel for the respondents have no objection.

5. In view of the above, the present appeal i.e. FAO-2195-2016 is dismissed as withdrawn.

<u>FAO-5848-2016</u>

6. The only issue which arises for consideration and is pressed by the counsel for the appellants in the present appeal is whether under issue No.3 it would be the present appellants i.e. driver and owner who would be liable to pay the compensation as had been held by the Tribunal or it would be the insurance company who would be liable to pay the compensation, as is the case of the appellants. The other aspects are not in dispute and have not been challenged during the course of arguments.

7. Learned counsel for the appellants has submitted that the finding of the Tribunal on the aspect of the insurance company not being liable in spite of there being a cover note (RW-2/B) in favour of the appellants is illegal. It is further submitted that the appellants had produced the cover note bearing No.D2116208 which covered the date when the accident took place i.e. 25.02.2012 and the said cover note was duly issued by the authorised agent of the insurance company. It is stated that RW-2 (Avdesh Bali) had specifically stated in his evidence that the car was duly insured by Future Generali India Insurance Company, Ambala after an amount of Rs.6919/- was paid to the agent of the said insurance company and thereafter, the cover note was issued. It is further argued that even in the written statement filed by the present appellants,

who were respondents No.1 and 2 before the Tribunal, a plea had been taken in para 15 to the effect that the car in question was insured by Future Generali India Insurance Company Limited, Plot No.1, 2nd Floor, B.R. Complex, Jain Nagar, Ambala City. It is argued that in the present case, RW-1, who was the sole witness, examined by the insurance company, had produced on record Ex.RX as well as Ex.RY and a conjoint reading of Ex.RX, Ex.RY and RW-2/B would show that the cover note had been duly issued. It is further argued that the said witness (RW-1) had taken the plea that the cover note produced by the present appellants was a fake and manipulated document and that the insurance company was contemplating registering FIR. It is submitted that no FIR has been registered in the present case and once the insurance company had taken the plea that the cover note was fake and manipulated, it was incumbent upon the insurance company to have proved the said aspect.

8. It is submitted that in the present case, even as per the documents produced by the insurance company, it is apparent that the agent who had issued the cover note was Naveen Gupta and the said agent was working for the insurance company, however the said agent was never produced by the insurance company and thus, adverse inference should be drawn against them. It is further submitted that the appellants had done all that they could have possibly done to prove their case and in case any mischief was played by the agent of the insurance company, then, the present appellants should not be made to suffer for the same. In support of his arguments, learned counsel for the appellants has

relied upon the judgments passed by the Co-ordinate Bench of this Court in case titled as "***United India Insurance Co. Ltd.*** ***Vs***. ***Kanta Kumari and others***", ***passed in FAO-2915-2013, decided on 10.11.2017*** as well as in case titled as "***Oriental Insurance Company Limited*** ***Vs***. ***Kiran Kaur and others***", ***reported as 2011(10) RCR (Civil) 396***. Reliance has also been placed upon the judgment of the Co-ordinate Bench of this Court in case titled as "***National Insurance Company Ltd.*** ***Vs***. ***Maya Devi and others***", ***passed in FAO-2921-2018, decided on 05.10.2018, alongwith another connected case*** and also on the judgment of the Hon'ble Supreme Court in case titled as "***National Insurance Company Ltd.*** ***Vs***. ***Maya Devi and Ors.***", ***reported as 2024 INSC 1050***, vide which the judgment dated 05.10.2018 passed in the case of ***Maya Devi (supra)*** was upheld. It is prayed that in view of the said facts and circumstances, the present appeal be allowed and the findings, more so, with respect to issue no.3 to the extent that the present appellants had been held liable to pay the compensation be set aside.

9. Learned counsel appearing for the insurance company, on the other hand, has opposed the present appeal and has submitted that in the present case, the owner of the vehicle had not stepped into the witness box to state that the premium was paid by him to the insurance company. It is submitted that the insurance company had produced on record the entire record with respect to the present case, which included the cover note book (Ex.RX) issued to agent Naveen Gupta and also Ex.RY, which

were the excel sheets detailing the premium received by the insurance company during the period in question. It is further submitted that a perusal of the said excel sheets would show that no entry with respect to any premium received with respect to the insurance in question had been recorded and thus, neither any premium with respect to the car in question had been received nor the said car was ever insured, much less, any policy was issued in favour of the appellants. It is further submitted that it was for the appellants to prove as to whom they had paid the money and in case the money was paid to any agent, then, the said person should have been produced by the appellants in order to prove their case. It is argued that the finding of the Tribunal on issue No.3 with respect to the said aspect is in accordance with law and deserves to be upheld.

10. Learned counsel for the claimants has endorsed the arguments raised on behalf of the appellants i.e. driver and owner and has submitted that in the said circumstances, the insurance company should be directed to pay the amount of compensation awarded by the Tribunal.

11. This Court has heard learned counsel for the parties and has perused the record and is of the opinion that the appeal filed by the appellants (driver and owner of the vehicle in question) is meritorious and issue no.3 with respect to the aspect as to who is liable to pay the compensation had been erroneously decided by the Tribunal and in the facts and circumstances of the present case, it is the insurance company which is liable to pay the compensation for the reasons which have been detailed hereinafter.

12. On 28.08.2018, the Co-ordinate Bench of this Court was pleased to pass the following order: -

"Present : Mr. Lalit Kumar, Advocate for the appellants.

None for respondents No.1 and 2.

Ms. Vandana Malhotra, Advocate for respondent No.3.

****

None has entered appearance on behalf of respondents No.1 and 2 despite service.

Counsel for the appellants has argued that the Tribunal found that the cover note was not a forged document but held that since appellant No.1 had not appeared to disclose from which agent she had got the insurance, the Insurance Company should be exonerated. ***Further, once the original booklet (from which the cover note had been taken) was in the custody of the Insurance Company, it was their duty to question the agent to whom that book was issued and to seek explanation why carbon copies were blank.*** *Counsel for respondent No.3 seeks an adjournment to inspect the record.*

Adjourned to 9.10.2018. ***Meanwhile, execution proceedings shall remain stayed.***

August 28, 2018."

The said interim order has not been vacated till date.

13. In the claim petition filed by the claimants, it was stated in para 15 that the name and address of the insurer of the motor vehicle involved in the accident would be disclosed by the driver and owner of the vehicle. The present appellants (driver and owner),

who were impleaded as respondents No.1 and 2 before the Tribunal, had filed their written statement and in para 15 of the said written statement had taken a specific plea that the car number CH-01Z-6393 was insured with Future Generali India Insurance Company Limited, plot No.1, 2nd Floor B.R. Complex, Jain Nagar, Ambala City. Para 15 of the said written statement is reproduced herein below:-

> *"15. That para number 15 of the claim petition is replied* ***that the car number CH-01Z-6393 was insured with FUTURE GENERALI INDIA Insurance Company Limited*** *plot No.1, 2nd Floor B.R. complex, Jain Nagar, Ambala City (134003)."*

14. Appellant No.2-Avdesh Bali (driver of the vehicle) had been examined as RW-2 and in his evidence, he had specifically stated that the car number CH-01Z-6393 stands in the name of his mother Rajni and the same was duly insured by an agent of Future Generali India Insurance Co. Ltd., Ambala City, after proper verification of the said car and after receipt of cash payment of Rs.6919/- from said Avdesh Bali and thereafter, the agent had issued the cover note bearing No.D2116208. The relevant portion of his evidence is reproduced herein below: -

> *"4. That car bearing number CH-01Z-6393 stands on the name of deponent's mother namely Rajni respondent number* ***1. The said car was duly insured by FUTURE GENERALI INDIA INSURANCE CO LTD., Ambala city agent, after proper verification of the said car and after receipt of cash payment of Rs 6919/- from the deponent, and thereafter he i.e., the agent***

> ***issued cover note bearing number D2116208 under said insurance company seal and initials; and thus the said car was insured with FUTURE GENERALI INDIA INSURANCE CO LTD., by its branch office situated at plot number 1, 2nd floor B.R. Complex, Jain Nagar, Ambala City. It is the same cover note which was issued to the deponent.*** *I have also seen attested photo copy of the registration certificate of the aforesaid car on the court file."*

A perusal of the above evidence would show that Rajni, who was the owner of the car in question, was the mother of said Avdesh Bali, who was stated to be the driver of the offending vehicle and thus, it cannot be said that he would have no personal knowledge of the facts of the case including the fact of the premium being paid, more so, when in the above-said evidence he had stated that the money was paid by him (deponent).

15. The sole witness examined by the insurance company is Bhupinder Singh (RW-1). No agent muchless Naveen Gupta had been examined by the insurance company. The said RW-1 Bhupinder Singh had stated that the cover note (Ex.RW2/B) which had been produced by the driver and the owner was a fake and manipulated document. The said witness further stated that the cover note book which contained the seriatim of the cover note, which had been produced by the appellants was issued by the office on 03.01.2012 and that the premium register pertaining to the period of the cover note produced by the owner would show that there was no entry regarding payment of the premium of the alleged cover note. It was further stated by RW1 that the insurance

company was contemplating registering an FIR with respect to the fraud. It is not disputed before this Court that no such FIR has been registered.

16. Apart from the above evidence, three documents which are relevant for the purpose of adjudication of the issue in hand are RW-2/B produced by the appellants (driver and owner), Ex.RX and Ex.RY produced by the insurance company. A perusal of the said three documents when read in conjunction with each other and also in conjunction with the evidence and pleadings on record, would show that the plea set up by the appellants (driver and owner) is established, whereas, the defence set up by the insurance company with respect to cover note (Ex.RW2/B) being manipulated and forged, is not established. A perusal of the cover note (Ex.RW2/B) would show that the same bears no.D2116208 and had been issued on 03.01.2012. The same had been issued with respect to the car in question and in favour of Rajni-appellant No.1, who is the owner of the said car. Admittedly, the accident had taken place on 25.02.2012 i.e. after the issuance date i.e. 03.01.2012 and during the period when the said cover note was in force, as the same was in force till 11.12.2012.

17. Ex.RX which is the cover note book which had admittedly been issued to the agent Naveen Gupta by the insurance company, as per the stand of the insurance company, also would show that all the relevant documents with respect to cover note nos.D2116201 up to D2116210 are there in seriatim. From the said documents, it has not come about that the cover note number D2116208, which is the serial number of the cover

note produced by the appellants (driver and owner), was issued to any other person. It is not in dispute that with respect to every cover note, there are required to be four independent pages. The first being the copy of the insured, second being the office copy which is a carbon copy, 3rd being the 'intermediary copy' which is required to be sent in case of hypothecation to the concerned financier and fourth being the book copy which in case of requirement goes to the Regional Transport Authority. With respect to the cover note number D2116208, from the record produced by the insurance company, it is apparent that the first page is missing. With respect to the second page, which is the office copy, it is the case of the insurance company that the same was cancelled. In case the said cover note was cancelled, then, even the first page should have been in the cover note book as is the case with respect to cover note number D2116201. The cover note number D2116201 has all the four pages as the said insurance as per the case of the insurance company had also been cancelled, thus, even the first page is available on record.

18. The explanation with respect to the missing documents i.e. first page of cover note D2116208 could best be given by the agent of the insurance company to whom the cover note book was issued, which in the present case was Naveen Gupta. It is the said person who had to be produced by the insurance company to explain the loss of the first page and the appellants would have then got the opportunity to cross-examine the said Naveen Gupta. It is the insurance company which had the record of various cover notes and the cover note book (Ex.RX) had come from

their custody and it was for them to explain as to where the first page of the cover note which is required to be given to the insurer was. Moreover, since the said Naveen Gupta is the agent of the insurance company, thus, it was their duty to have produced the said agent and for the non-production of the said agent, adverse inference is required to be drawn against the insurance company. The appellants have done all that they could have done. The cover note number D2116208 had been produced by them which had been duly exhibited as Ex.RW2/B. From the record, the insurance company has also not been able to show that the cover note of the said serial number was issued to any other person, rather the missing of the first page of the said cover note, which is meant for the insurer, would further the case of the appellants to the effect that the said first page was duly handed over to the appellants, after the vehicle was issued by the authorized agent of the Future Generali India Insurance Company Limited. The Tribunal thus has fallen in error while considering the said aspect.

19. A Coordinate Bench of this Court in the case of ***Kanta Kumari and others (supra)*** had observed that the owner of the insured vehicle cannot be punished for the reason that there was some mischief between the principle and the agent i.e. insurance company and his agent and that the plea raised by the insurance company therein to the extent that the cover note was a fake cover note, was for them to prove and the onus regarding the same was on the insurance company therein which had to be discharged by the insurance company therein. In the said case also,

the record of the cover note was directed to be produced and on a perusal of the record/cover notes it was found by the Tribunal that the cover note in question was missing and in the said circumstances, it was the insurance company therein which was held liable as the onus to prove that the cover note was a fake cover note was upon it, which it could not discharge. In the said case, it was also observed that the blank cover notes/books would not be given to a stranger especially with cover notes bearing stamps of the insurance company.

20. In the present case, it is impossible to believe that the present appellants would have set up a cover note of the present insurance company bearing a particular number, which they would have got removed from the record which was in the custody of the insurance company. The insurance company neither got any FIR registered nor had produced the agent Naveen Gupta for the purpose of him being cross-examined by the driver and owner and had rendered no explanation as to where the first page of the cover note in question was.

21. In the present case, the plea which has been taken by the insurance company is of fraud and cover note being fake. The Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Maya Devi and ors. (supra)*** had observed that merely alleging fraud would not amount to proving it and for proving the same, the evidence is required to be led and the onus would also lie on the person alleging fraud. In the said case, it was observed by the Hon'ble Supreme Court that the insurance company therein was not able to discharge its onus to prove

the alleged fraud and thus, the liability of the insurance company therein could not be escaped by alleging fraud. In the said case, although the accident had occurred on 11.04.2017 at about 14:15 hrs, and the insurance policy was allegedly obtained at 15:54 hrs on 11.04.2017, but in the facts and circumstances of the said case and in view of the fact that the fraud which was alleged was not proved by the Insurance Company, the appeal filed by the insurance company was dismissed.

22. In the present case, as has been stated herein above, it is not in dispute that the date on which the accident took place, the policy was in force. The accident had taken place on 25.02.2012 whereas the cover note had been issued on 03.01.2012 and the policy was applicable till 11.12.2012. At this stage, it is relevant to clarify one more aspect; it has been pointed out by the counsel for the insurance company that the said policy was in force from 12.12.2011 up to 11.12.2012, although the date of issue of the cover note which is apparent from the stamp is 03.01.2012. It is submitted that a policy of a prior date from the date of issue of the cover note could not possibly have been issued. In the said regard, learned counsel for the appellants has referred to the excel sheets detailing the premium collections, which had been exhibited as Ex.RY and has referred to several entries in the said document to show that in several cases the period of policy is prior to the date of issuance of cover note. To exemplify, the cover note number D2115105 was issued on 04.02.2012 and was stated to be valid from 30.12.2011 to 29.12.2012. It would be relevant to note that in the column of the said cover note, the agent name

had been mentioned as Naveen Gupta, which shows that Naveen Gupta was a regular agent of the insurance company.

23. A further perusal of the Ex.RY would show that in several policies/cover notes, the period of validity has been shown from a prior date and further in a large number of entries the premium had been mentioned as “0”.

24. At any rate, even if the period prior to 03.01.2012, on which date as per the respondent-insurance company the said cover note book had been issued is excluded from consideration, then also, since the accident had taken place on a subsequent date from 03.01.2012 i.e. 25.02.2012 and as per the cover note (Ex.RW2/B), the same was valid till 11.12.2012, thus, on account of the same, it cannot be stated that the said cover note was not valid at the time when the accident had taken place.

25. Thus, from a perusal of the record produced by the insurance company, it could not be proved that the cover note (Ex.RW2/B) was a fake or manipulated document and thus, the insurance company has not been able to discharge the onus of proving the same. The insurance company had also not examined the best witness to prove why the first page of the cover note in question was missing from the record, for which an adverse inference is required to be drawn against them. Accordingly, the finding on issue no.3 to the extent that the insurance company was exonerated and the present appellants had been held to be liable, deserves to be set aside.

26. Keeping in view the above-said facts and circumstances, the

present appeal is allowed and the award dated 03.12.2015 is modified to the extent that the claimants would be paid the compensation, as awarded by the Tribunal, by the insurance company-respondent No.3. Since a Co-ordinate Bench of this Court vide order dated 28.08.2018 had stayed the execution proceedings and the claimants had not got any money, thus, in the said facts and circumstances, the insurance company-respondent No.3 is directed to pay the compensation, as awarded by the Tribunal within a period of six weeks from today, to the claimants in the same proportions as have been awarded by the Tribunal.

(VIKAS BAHL)
JUDGE

May 06, 2025
naresh.k

Whether reasoned/speaking? Yes
Whether reportable? Yes