HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Misc. Appeal No. 3210/2017

Bharti-Axa General Insurance Co. Ltd., First Floor, The Ferns Icon, Survey No. 28, Doddanekundi, Banglore- 560032. Through Its Authorised Signatory At "royal World", Sansar Chand Road, Jaipur. Insurer Of Car No. Rj-14-Cn-5411

----Appellant

Versus

1. Kamal Kumar S/o Sh. Nemi Chand, R/o Momasar Baas, Shri Dungargarh, Dist. - Bikaner.
2. Amba Dan Singh S/o Sawai Singh, R/o Plot No. 03, Maa Karni Vihar, Gokul Pura, Kalwaad Road, Jhotwada, Jaipur. Owner Of Car No. Rj-14-Cn-5411
3. Ghanshyam Ratnoo S/o Ramdayal Ratnoo, R/o Dasodi, Tehsil-Kolayat, Police Station- Kolayat, Dist. Bikaner. Driver Of Car No. Rj-14-Cn-5411

----Respondents

Connected With

S.B. Civil Misc. Appeal No. 3138/2017

Bharti-Axa General Insurance Co. Ltd., First Floor, The Ferns Icon, Survey No. 28, Doddanekundi, Banglore- 560032. Through Its Authorised Signatory At "royal World", Sansar Chand Road, Jaipur. Insurer Of Car No. Rj-14-Cn-5411

----Appellant

Versus

1. Kamal Kumar S/o Sh. Nemi Chand,
2. Ku. Dipti D/o Sh. Kamal Kumar, Minor Through Father Natural Guardian, R/o Momasa Baas, Shri Dungargarh, Dist. - Bikaner.
3. Amba Dan Singh S/o Sawai Singh, R/o Plot No. 03, Maa Karni Vihar, Gokul Pura, Kalwaad Road, Jhotwada, Jaipur. Owner Of Car No. Rj-14-Cn-5411
4. Ghanshyam Ratnoo S/o Ramdayal Ratnoo, R/o Dasodi, Tehsil - Kolayat, Police Station- Kolayat, Dist. - Bikaner. Driver Of Car No. Rj-14-Cn-5411

----Respondents

S.B. Civil Misc. Appeal No. 3139/2017

Bharti-Axa General Insurance Co. Ltd., First Floor, The Ferns Icon, Survey No. 28, Doddanekundi, Banglore- 560032. Through Its Authorised Signatory At "royal World", Sansar Chand Road, Jaipur. Insurer Of Car No. Rj-14-Cn-5411

----Appellant

Versus

1. Raj Kumar S/o Sh. Kulajmal,
2. Jyoti D/o Raj Kumar,
3. Puja D/o Raj Kumar,
4. Deepika D/o Raj Kumar,
5. Rahul S/o Raj Kumar, Resp. No.4 And 5 Are Minor Through Husband-Natural Guardian- Raj Kumar S/o Sh. Kulajmal, R/o Momasar Baas, Shri Dungargarh, Dist. Bikaner.
6. Amba Dan Singh S/o Sawai Singh, R/o Plot No. -03, Maa Karni Vihar, Gokul Pura, Kalwaad Road, Jhotwada, Jaipur Owner Of Car No. Rj-14-Cn-5411
7. Ghanshyam Ratnoo S/o Ramdayal Ratnoo, R/o Dasodi, Tehsil-Kolayat, Police Station- Kolayat, Dist. Bikaner. Driver Of Car No. Rj-14-Cn-5411

----Respondents

S.B. Civil Misc. Appeal No. 3140/2017

Bharti-Axa General Insurance Co. Ltd., First Floor, The Ferns Icon, Survey No. 28, Doddanekundi, Banglore- 560032. Through Its Authorised Signatory At "royal World", Sansar Chand Road, Jaipur. Insurer Of Car No. Rj-14-Cn-5411

----Appellant

Versus

1. Banna Ram S/o Sh. Badri Narayan,
2. Bhanwar Lal S/o Sh. Banna Ram,
3. Dharam Chand S/o Sh. Banna Ram,
4. Kanhaiya Lal S/o Sh. Banna Ram, R/o Momasar Baas, Shri Dungargarh, Dist. - Bikaner.
5. Amba Dan Singh S/o Sawai Singh, R/o Plot No. -03, Maa Karni Vihar, Gokul Pura, Kalwaad Road, Jhotwada, Jaipur Owner Of Car No. Rj-14-Cn-5411
6. Ghanshyam Ratnoo S/o Ramdayal Ratnoo, R/o Dasodi,

Tehsil-Kolayat, Police Station- Kolayat, Dist. Bikaner. Driver Of Car No. Rj-14-Cn-5411

----Respondents

For Appellant(s)	:	Mr. Santosh Choudhary for Insurance Company
For Respondent(s)	:	Mr. Trilok Joshi for Owner

HON'BLE DR. JUSTICE NUPUR BHATI

Judgment

11/02/2025

1. The Civil Misc. Appeal nos. 3210/2017, 3138/2017, 3139/2017 and 3140/2017 have been preferred by the appellant-Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (hereinafter as 'the Act') assailing the judgment and award dated 01.09.2017 passed by learned Judge, Motor Accident Claims Tribunal, Bikaner (hereinafter as 'the learned Tribunal') in MAC Case Nos. 36/2013, 37/2013, 38/2013 and 39/2013 and whereby the learned Tribunal partly allowed the claim petitions filed by the respective claimants under Section 166 of the Act and awarded compensation of Rs.01,50,000/-, Rs.06,19,792/-, Rs.07,40,368/- and Rs.04,81,336/- respectively in favour of respective claimants along with interest @7% p.a. from the date of filing the respective claim petitions, while fastening the liability upon the appellant/insurance company along with the respondent/owner and respondent/driver, jointly and severally.

2. Since all these appeals arise out of the common judgment and award dated 01.09.2017 (hereinafter as 'impugned award') therefore, the same are being decided vide this judgment.

3. Briefly stated the facts of the case are that on 20.09.2012, Kumari Hansika, along with her mother Smt. Kanta Devi, Smt. Rami Devi, and Smt. Rupa Devi, was walking from her house to agricultural field. At approximately 07:30 A.M., while they were walking on the NH-11 roadside near Sesomu School, Shri Dungargarh, the car bearing registration number RJ-14-CN-5411, being driven by respondent-driver, came from direction of Bikaner to Jaipur at high speed and negligently hit them. Due to the accident, Kumari Hansika and Smt. Rami Devi died on the spot, while Smt. Rupa Devi and Smt. Kanta Devi succumbed to their injuries during treatment. An FIR No. 489/2012 was registered at Police Station Dungargarh, District Bikaner, and after an investigation, a charge sheet was filed against respondent-driver (Ghanshyam). Subsequently, the claimants filed the respective claim petitions seeking compensation on account of death of the deceased persons.

4. The respondent-owner, in its reply to the claim petitions, denied the allegations, stating that the accident occurred due to the negligence of the deceased themselves and not due to the fault of the respondent-driver. It was also submitted that the driver had a valid and effective driving license at the time of the accident and that the vehicle was insured with appellant-Insurance Company. If any compensation is awarded in favour of the claimants, the liability should be fastened solely on appellant-Insurance Company.

5. The Appellant-Insurance Company, in its reply to the claim petitions, denied liability, contending that the driver did not possess a valid and effective driving license at the time of the

accident and was under the influence of alcohol. Additionally, it was claimed that the vehicle was not insured with the appellant-insurance company, and the covernote No. 31660017(Ex.NA01) was also not issued by the appellant-insurance company. On the basis of pleadings of the parties the learned tribunal framed seven issues.

6. The claimants examined four witnesses and produced 23 documentary evidences (from Ex.1 to Ex.16). The respondents examined two witness and produced 20 documentary evidences (from Ex.NA-01 to Ex.NA-20).

7. After hearing all the parties and perusing the material available on the record, the learned tribunal partly allowed the claim petitions filed by the respective claimants and awarded compensation of Rs.01,50,000/- (in MAC case no. 36/2013), Rs.06,19,792/- (in MAC case no. 37/2013), Rs.07,40,368/- (in MAC case no. 38/2013) and Rs.04,81,336/- (in MAC case no. 39/2013), along with interest @7% p.a. from the date of filing the claim petitions, while fastening the liability upon the appellant/insurance company along with the respondent/owner and respondent/driver, jointly and severally. Aggrieved by the same instant civil misc. appeals have been preferred by the appellant/insurance company.

8. Learned counsel for the appellant-insurance company submits that the learned tribunal has erred in fastening the liability on the appellant-insurance company as the car was not insured with appellant-insurance company at the of the accident. He submits that the covernote no.31660017 (Ex.NA01) is a color copy and has been forged by the respondent-owner. He also

submits that the covernote no.31660017 (Ex.NA16) is the original covernote which was never issued to the respondent-owner as the same was cancelled. He also submits that the Ex.NA16 to Ex.NA19 are four copies of the covernote no.31660017 which were cancelled and are in the possession of the appellant-insurance company. He also submits that Cheque no.142195 is of amount of Rs.17,156/- which is also mentioned in the covernote no.31716707 (Ex.NA11) dated 01.10.2012 which bears signature of the respondent-owner, hence the same shows that the car was insured with the appellant-insurance company only from 01.10.2012 which is subsequent to the date of the accident i.e., 20.09.2012.

9. *Per contra*, the learned counsel for the respondent-owner submits that the learned tribunal has rightly fastened the liability on the appellant-insurance company. He also submits that he furnished blank cheque bearing no.142195 to the appellant-insurance company for the purpose of issuance of the Covernote No.31660017 (Ex.NA1). He also submits that he never got a communication regarding cancellation of the Covernote No.31660017 from the appellant-insurance company.

10. Heard the parties and perused the material available on record.

11. This court finds that the learned tribunal after perusing the material available on record has observed that the witness examined by the appellant-insurance company - Mr. Shailendra Singh (NAW-02) has admitted that the Covernote No.32609156 (Ex.NA03) dated 18.09.2013, Covernote No.33592476 (Ex.NA04) dated 18.09.2014 and the covernote no.34358539 (Ex.NA05)

dated 18.09.2015 have been issued by the appellant-insurance company to the respondent-owner and on these covernotes insurance policy has also been issued. However, the learned tribunal has observed that Ex.NA03 to Ex.NA04 do not bear signature of the respondent-owner, which shows that it is the general practice in the appellant-insurance company that signature of isured is not required on the covernote thus, the signature of the respondent-owner on covernote (Ex.NA11) raises suspision. The learned tribunal has also observed that the respondent-owner (NAW-01) was not asked any questions by the appellant-insurance company regarding covernote (Ex.NA11). The learned tribunal has also observed that as per the appellant-insurance company the Covernote (Ex.NA11) was issued for a period from 01.10.2012 to 30.09.2013, however, the subsequent Covernote No.32609156 (Ex.NA03) dated 18.09.2013 was issued from 19.09.2013 to 18.09.2014; thus, the same raises suspision on the covernote (Ex.NA11) as there was no occasion for the appellant-insurance company to issues subsequent covernote (Ex.NA03) from 19.09.2013 when the earlier covernote (Ex.NA11) was in currency till 30.09.2013.

12. Learned tribunal has also observed that the respondent-owner (NAW-01) during his cross-examination has stated that he does not know whether covernote (Ex.NA01) was lost or not, which suggest that the covernote (Ex.NA01) belongs to the appellant-insurance company and has been lost, however, the witness examined by the appellant-insurance company (NAW-02) has stated that no action has been taken regarding the covernote (Ex.NA01) though, an internal inquiry is being conducted by the

appellant-insurance company. The learned tribunal has also observed that no evidence is available on record to show as to what conclusion has been arrived at in the internal inquiry.

13. Learned tribunal has also observed that the witness examined by the appellant-insurance company (NAW-02) has been unable to explain as to why the covernote (Ex.NA16) was cancelled. Learned tribunal has also observed that the details mentioned on the covernote (Ex.NA01) and the covernote (Ex.NA16) are exactly the same and also bear mention of cheque no.142195. It was observed by the learned tribunal that no evidence has been produced by the appellant-insurance company to the effect that cancellation of the covernote (Ex.NA16) was communicated to the respondent-owner. Learned tribunal also observed that no evidence has been produced by the appellant-insurance company to show that the covernote (Ex.NA01) is forged and fabricated. Thus, considering all these materials available on record the learned tribunal has arrived at the conclusion that the appellant-insurance company has forged documents so as to absolve itself from the liability whereas the car was insured with the appellant-insurance company at the time of the accident.

14. This court finds that the both covernote (Ex.NA01) and covernote (Ex.NA16) bears the same number i.e., 31660017. Further all the details in these covernotes are the exactly the same including the cheque no.142195 dated 18.09.2012 and the amount of premium i.e., Rs.17,443/-. It is important to note here that the Covernote no.31716707 (Ex.NA11), which the appellant-insurance company claims to have been issued to the respondent-

owner, also contains details of the cheque no.142195 but with different date (i.e.,01.10.2012) and different premium amount i.e., Rs.17,156/-. Further, it is stated by the appellant-insurance company itself that the covernote no.31716707 (Ex.NA11) and covernote no.31660017 (Ex.NA16) are the original covernotes; however, this court is unable to comprehend the fact that how the two covernotes (Ex.NA11 and Ex.NA16) which are of different dates contains the same cheque number (i.e.,142195) but with different amount of premium. Thus, the evidence available on record do not relate to the submissions made by the appellant-insurance company. Therefore, the contention of the respondent-owner that he submitted blank cheque no.142195 for the purpose of issuance of covernote no.31660017 (Ex.NA01) appears to be true.

15. Moreover, the contention of the appellant-insurance company that the Ex.NA01 has been forged by the respondent-owner does not have any force as firstly, the appellant-insurance company has failed to show as to what action it has taken against such act of forgery and also as to what conclusions have been arrived at by the internal inquiry; secondly, the appellant-insurance company has not placed on record the communication to the respondent-owner, if any made, regarding the cancellation of Covernote (Ex.NA16) and also the appellant-insurance company has been unable to explain the reason for cancellation of the covernote (Ex.NA16); thirdly, the Covernote no.31716707 (Ex.NA11), which the appellant-insurance company claims to have been in currency from 01.10.2012 to 30.09.2013 does not seem genuine as it is difficult to understand the reason for the appellant-insurance

company to issue a subsequent Covernote No.32609156 (Ex.NA03) from 19.09.2013 when the earlier Covernote no.31716707 (Ex.NA11) was still in currency till 30.09.2013. Therefore, the learned tribunal has righly arrived at the conclusion that the car was insured with the appellant-insurance company at the time of the accident while taking into consideration the covernote no.31660017 (Ex.NA01).

16. Thus, in view of the above, the instant misc. appeals being devoid of any merit deserves to be dismissed. Accordingly, the instant appeals are dismissed.

17. Record be sent back forthwith.

(DR.NUPUR BHATI),J

51-54-pradeep/-