
(2018) 03 CAL CK 0015
In the Calcutta High Court
Case No : FMA 319 of 2014

H.S. K.E.R.R, REGIONAL MANAGER & DISCIPLINARY
AUTHORITY, UNITED INDIA INSURANCE COMPANY LTD.

APPELLANT

Vs

SAJAL KUMAR BANERJEE

RESPONDENT

Date of Decision : 20-03-2018

Acts Referred:

Citation : (2018) 03 CAL CK 0015

Hon'ble Judges : NADIRA PATHERYA, J; SUBRATA TALUKDAR, J

Bench : Division Bench

Advocate : Dipak Ghosh, Ranjay Dey, Bikash Ranjan Bhattacharya, Santi Das

Final Decision : Dismissed

Judgement

Subrata Talukdar, J

Under challenge in this appeal is the order dated 25th September, 2013 passed in WP 7262(W) of 2011 (for short the writ petition) by the Ld. Trial

Court, inter alia, directing as follows:-

“In my judgment, when some material evidence, which would turn the course of the trial has been ignored by the adjudicating authority, it amounts

to the decision being based on no evidence. The appraisal of the evidence actually made by the adjudicator is of no value, and does not produce a

just result. In those circumstances, it also points to perversity of the decision or the decision making process. These are also grounds, recognised

by the Supreme Court, in the above decisions, for interference by the Court with the enquiry proceedings.

In my opinion, a re-adjudication is necessary by the appellate authority. In those circumstances, the order of the appellate authority dated 21st May,

2009 is set-aside and quashed.Â The appellate authority is directed to rehear the appeal and to make a fresh decision with reasons within three months of communication of this order.Â Such adjudication will be in accordance with the observations made above.Â In view of the observations made above the insurance company will be entitled to, if the case so deserves, impose any punishment except the punishment of dismissal or removal from service.Â This is because of the fault of the company in making payment under the self-same policy regarding which fraud of the writ petitioner is alleged. I however, till disposal of the appeal the writ petitioner will be deemed to remain suspended only.Â The writ application is disposed of accordingly.â??

Subsequently, stay of operation of the judgment and order was prayed for by Ld. Counsel for the Appellant/United India Insurance Company Ltd. (for short the Company).Â Stay was granted till the 12th of November, 2013 on the ground that since the order of dismissal was issued on 21st of May, 2009, therefore the Company had a right to prefer an appeal from the order of the Ld. Trial Court dated 25th September, 2013 (supra).

Mr. Ranjay Dey, Ld. Counsel appearing for the Appellant/Company submits that the writ petition arises out of a Disciplinary Proceeding (for short DP) initiated against the present Respondent/Writ Petitioner vide chargesheet dated 11th of March, 2004.Â The Article of Charges I and II respectively read as follows:-

â??Article-I

Sri Sajal Mukar Banerjee was working as Development Officer under BO, Serampore during the years 2000 and 2001.Â Whilst working as such, he signed and issued only copies of motor covernote no. 567818 on 26.6.2000 to cover a Bajaj M-80 Motorcycle and retained the original covernote with himself Sri Sajal Kumar Banerjee utilised the original of this covernote no. 567818 to issue cover to a Mini Bus bearing registration no. WB-15-3628 belonging to Smt. Dipika Saha and collected each premium of Rs. 5,200.80 on 16.8.2000.Â Sri Sajal Kumar Banerjee did not deposit each premium of Rs. 5,200.8. Collected by him on account of original covernote no. 567818 issued to cover vehicle no. WB-15-3628 but misappropriated the same.

It has come to light that the vehicle no. WB-15-3628 met with an accident on 16.8.2000 at about 22.30 hours resulting in the death of a third party. In

order to conceal his act of misappropriation and also to grant cover to the vehicle no. WB-15-3628 for the period of accident, Sri Sajal Kumar

Banerjee issued another covernote no. 567964 with the same date of issue as well period of cover as in covernote no. 567818 as per details given in

Annexure II TR case under MACT 108/2001 and 109/2001 has been filed against the Company. An amount of Rs. 50, 000/- has already been paid

towards NEL under 108/2001 and a potential TP liability of Rs. 2, 00,000/- is being faced by the Company.

Thus Sri Sajal Kumar Banerjee misappropriated Rs. 5,200.80 by issuing same covernote to cover two different vehicles and tampered with records by

issuing another covernote to conceal his act of misappropriation and caused undue pecuniary loss of Rs. 50, 000/- and undue potential pecuniary loss

of Rs. 2,00,000/- to the Company.

Article-II :

Whilst working as above, Sri Sajal Kumar Banerjee misappropriated Rs. 6,060/- by not depositing the cash premium collected by him against Motor

Covernotes no. 5657804 and 567805 dated 17.04.2000 and 567808 and 567809 dated 24.5.2000 from various insureds as per details in Annexure II.

Thus Sri Sajal Kumar Banerjee misappropriated Rs. 6,060/- in order to confer undue pecuniary benefit to himself and caused corresponding undue

pecuniary loss to the Company.

Article of charge III reads as follows:-

Article III :

Shri Sajal Kumar Banerjee had signed and issued antedated Motor covernotes no. 567973, bearing dated as 26.09.2000, no. 567974 bearing date as

30.09.2000 whereas covernote no. 567972 was issued on 03.11.2000 and covernote no. 567979 bearing date as 20.11.2000 whereas covernote no.

567978 was issued on 29.11.2000, as per details in Annexure II.

Thus, Shri Sajal Kumar Banerjee in a grossly negligent manner had issued antedated motor covernotes in order to grant undue benefit to the insured, in

gross violation of laid down rules and procedures.

By the above acts, Shri Sajal Kumar Banerjee failed to maintain absolute

integrity, devotion to duty and acted in a grossly negligent manner which is prejudicial to the interest of the Company within the meaning of Rule 3(1)(i)(ii) read with 4(5) and 4(9) of the GI(CDA) Rules, 1975.â??

Mr. De submits that the Respondent/Writ Petitioner was afforded every opportunity of defence and, there is no violation of the principles of natural justice.Â It is pointed out that the Enquiry Officer (EO) has, inter alia, held as follows:-

First, the Respondent/Writ Petitioner/Charge Sheeted Officer (CSO) has admitted the pre-dating of cash premiums deposited although, no pecuniary

loss thereof has been caused to the Appellant/Company.Â The Respondent/Writ Petitioner, however, denies pre-dating the receipt of the cash

premium on the single occasion when loss has allegedly occurred to the Appellant/Company. Therefore, it was concluded by the EO that the CSO has

a history of misappropriating and antedating the Cover Notes of insurance policies which were not detected in the past and, could only be discovered

when the Appellant/Company was put to financial loss.Â Second, the Cover Note qua the vehicle which became involved in the accident indicates an

unholy effort to cover the loss suffered by the Company on account of the accident.

Third, the CSO having signed the Cover Note without complying with other official formalities and, particularly in a situation when the Cover Note

was antedated, cannot shirk his responsibilities.Â Fourth, the CSO ought to have taken a proper defence in Court by challenging the Cover Note

which, he alleges to be forged.Â Concluding that the CSO â??by virtue of his action had exposed the Company to potential liability and therefore his

culpability cannot be ignoredâ??, the EO forwarded his recommendation of the charges to the Disciplinary Authority (DA) as proved.

The findings of the EO stood remanded for fresh enquiry â??into the charge of misappropriation of premium (Article II) and antedating of Cover

Note (Article III) framed vide Memorandum dated 11th March, 2004â?? against the CSO.Â Therefore, the EO was directed to furnish a fresh report.

By the second report the EO affirmed his earlier conclusion in the first Enquiry Report to the effect that the CSO has exposed the Company to

potential liability and therefore his culpability cannot be ignored.Â The EO found that the Article of Charges II and III needed remand for fresh

enquiry, pointed out grossly negligent action on the part of the CSO which, however, may not point to conferment of undue benefits in favour of the insured entities.

Therefore, since the EO came to the finding that the CSO had acted in gross violation of the rules and procedure laid down the DA imposed the penalty of removal from service which shall not be a disqualification for future employment of the CSO. The Appellate Authority (AA), acting under the extant 1975 Service Rules, confirmed the order of removal passed by the DA.

The representation preferred by the CSO/Writ Petitioner to the Chairmancum-Managing Director of the Company did not cut ice and, no reason was found to interfere with the decision of the AA.

Mr. De therefore argues that the order of the Ld. Trial Court dated 25th September, 2013 fell into error on the score that the Ld. Trial Court embarked into the sphere of appreciation of evidence which was purely within the realm of the DA. The Ld. Trial Court, having regard to the law settled on the above point, could not have reached the conclusion that the DP involved a situation of no evidence since, some material evidence which, in the opinion of the Ld. Trial Court, could have turned the course of the proceedings, was ignored.

Mr. De, relying on several judicial authorities on the point, argues that the order of the AA dated 21st May, 2009 could not therefore have been quashed on the basis of the observations made by the Ld. Trial Court vide its judgment and order dated 25th September, 2013. The Ld. Trial Court also acted in excess of jurisdiction by directing imposition of punishment, except the punishment of dismissal or removal from service.

In support of his arguments Ld. Counsel for the Appellant/Company relies upon the following authorities:-

- a) 2004 (8) Scale (at Paragraph 24) on the point that in the face of some material evidence the Court sitting in judicial review ought not to substitute its findings with that of the DA and AA.
- b) 2013 (7) Scale 417 (at Paragraphs 17 & 18) on the point same as (a) above.
- c) 2015 (1) Scale 16 (at Paragraph 11) on the point that cases of misappropriation/corruption must be firmly dealt with and, the amount of misappropriation is immaterial.

- d) 2015 LLR 179 (at Paragraphs 11 & 12) on the point same as (a) and (b) above.
- e) 2011 (4) Scale 56 (at Paragraphs 6 & 7) on the point that the findings in the DP cannot be the subject matter of judicial review based on the postulate that subsequently acquittal is secured in the criminal proceeding.
- f) AIR 2004 SCW 5427 on the point that there is no scope for misplaced sympathy in cases of negligence as established through DPs.

Mr. De therefore argues that the order of the Ld. Trial Court be set aside.

Appearing for the Respondent/Writ Petitioner/CSO, Mr. Bikash Ranjan Bhattacharyya, Ld. Senior Counsel with Ms. Santi Das, Ld. Counsel

straightway takes this Court to the reply of the writ petitioner to the Articles of Charges. The reply requires to be set out in full:-

â??To,

Mr. S. Chakraborty

Manager & Disciplinary Authority United India Insurance Co. Ltd.

Regional Office

Himalaya House

38B, JL, Nehru Road

Kolkata- 700071

Through Proper Channel

Dear Sir,

Re: Reply towards Articles of Charge framed against Sri Sajal Mr. Banerjee, Dev. Officer, Serampore Br.

Ref: Your Memorandum dtd. 11/03/2004

With reference to your above said memo, I hereby deny all the allegations framed in the articles of charge contained in the said Memorandum. Given

below are the detailed reasons per Article, on the basis of which

I deny the charges, framed against me by the authority that are totally far away from the fact(s) contained in the above said Memo.

Reply to Article 1:

1. The Original as well the copies of the said Cover Note No. 567818 was issued in the name of the proposer Mr. Ananta Karmakar to cover his Baja

M-80 Motor Cycle bearing Registration No. WB-16/B-6219, on 28/06/2000 against a premium of Rs. 81/- and the copies of the same has been duly

deposited to the office in time.Â The Original Cover Note as per rules was given to Mr. Ananta Karmakar who after paying the premium has taken the Original Cover Note.

2. On my personal cost and efforts IO have collected a copy of the judgment of MACC No. 108 from MACT Hooghly, and an Official Written

Conformation from the same Court Annexed herewith on going through which the authority will come to know the FACT that the evidence of

insurance submitted to the court was only a Xerox copy of the Cover Note NO. 567818 containing the name of the insured as Smt. Dipika Saha

covering Vehicle No. WB-15/3628, which to the best of my knowledge was a fabricated document. To my surprise how the liability against such a

fabricated and photocopied document was accepted by our company without seeing the Original & without investigating the facts of the documents or

case when I have proved beyond doubt that only xerox copy of the cover note was produced before the court (see Annx No. 1).

3. Consecutively there is no question of accepting a premium of Rs. 5200.80 from Smt. Dipika Saha, neither issuing her Originally Cover Note No.

576818 on 16/08/2000, which I have already issued to Mr. Ananta Karmakar on 26/06/2000 i.e. about 50 days prior to the alleged date of the issuance.

4. I have issued the cover note No. 567964 on 16/08/2000 at 12 PM (Night) in the name of Smt. Dipika Saha when one Mr. Tapan Bose who is a

Broker (Dalal)in the Hooghly Motor Vehicles Deptt., came to my residence at around 11.45 PM on 16/08/2000 with a proposal form filled up in the

name of Smt. Dipika Saha insure a Bus of the said owner stating â??that he (Tapan Bose) was told by its owner (Mrs. Dipika Saha) that the bus had

a trip booked on the next morning at early hours and the insurance was required urgentlyâ??.Â When I enquired about the previous insurance he

stated that as told by Smt. Dipika Saha, the bus has been bought by her recently and the previous insurance policy was not handed over to them by the

previous owner.Â Mr. Tapan Bose used to come to my residence frequently, to take insurance cover notes of the various premiums of vehicles,

collected from Hooghly motor vehicles deptt., and I used to issue him the cover notes.

5. Most of the time, Mr. Tapan Bose uses to right down the cover note in my

presence and it are signed by me thereafter. The cover notes are then deposited along with proposal forms and premiums to the office by myself as well often by Shri Tapan Bose who is a reliable person and who has been giving me insurance premiums for last 20 years, and sometimes these are also deposited by the agent concerned.

6. I think there is no liability of the company for the above accident neither under Cover Note No.567818 which has not been issued to Smt. Dipika

Saha, NOR under Cover Note No.567964 which has been issued to Smt. Dipika Saha but the insurance cover has incepted on 12 PM from

16/08/2000 i.e. 1.5 hrs., after the occurrence of the accident.

7. Physical inspection of the vehicle in case of a break in insurance is compulsorily these days but it was not a compulsion at that time because the

office would not have accepted the proposal if inspection was a compulsion, neither it was the practice nor did the office used to give cover after 48

hrs. of accepting the proposal in case of such break. The so called undated proposal form submission was a mere oversight, overwriting in the

proposal form was to rectify the wrong entry.

8. Thus the charge framed in Article 1 is totally false and I deny the charges.

REPLY TO ARTICLE II :

9. Many times I have to depend on my agents and representatives for deposition of premiums to my office as because I had to give a lot of time and

energy to service my valued clients like Jayashree Textiles, Link Pen & Plastics, various cold storage etc. The premiums were deposited to the office

but I am surprised that how these businesses were not accounted and being totally unaware of this, I with a clean intension have deposited the office

copies of the said cover notes along with the C.N utilisation sheet. It was never done intentionally because, had it been my practice, the authority

would have found a number of such misappropriations in my service period.

10. Hence I deny the charges of misappropriation of Rs.6000/- although if the authority asks me to deposit this amount I will deposit the same.

REPLY TO ARTICLE III :

11. The cover notes mentioned in this column were not antedated as alleged but it is true due to oversight these cover notes were not issued serially,

this unintentional act of time has neither caused any harm to our companies

interest nor any financial loss to our companies. Hence I deny the charge

that these cover notes were antedated but I accept that these cover notes were not issued serially, I ensure that such mistakes will not occur in future.

12. Under the circumstances it is clear that I have maintained absolute integrity, devotion to duty and acted with honesty to perform my duties and no

negligent act was done by me and I have worked for the interest of the company for last 24 years. On several occasion I was authorised to officiate

the duty of a branch manager & I am also a cheque signatory authority of our branch. Hence proceedings under Rule 25, 3(1)(i)(ii) read with 4(5) &

4(9) of the GI (CDA) Rules 1975 against me is not tenable in law and hence the same may kindly be dropped.

Thanking you.â??

Mr. Bhattacharyya therefore argues that although the charges, prima facie, appear to be serious in nature, the stand of the Company before the Motor

Accident Claims Tribunal (for short MACT) also requires to be transparent.Â It is argued that there can be no question of using the first Cover Note

which related to a Bajaj Motorcycle for covering the claim in relation to a bus which met with an accident several weeks later.

It is further argued that it is strange that the Company relied upon the xerox copy of the first Cover Note to contest the MACT case.Â Even with

regard to the subsequent Cover Note relating to the bus, Mr. Bhattacharyya points out that nothing has been brought on record to demonstrate that the

second Cover Note was the handiwork of the Writ Petitioner/CSO to defraud the Company.Â It is also not proved in the enquiry that the Writ

Petitioner/CSO enriched himself at the cost of the Company through misappropriation or corrupt practice.

Next, taking this Court to pages 114, 115, 116 and 124 of the Paper Book, Mr. Bhattacharyya submits that although there may be an allegation of

routine administrative negligence, it cannot be alleged that the Writ Petitioner/CSO acted in a manner to cause actual financial loss to the Company or,

expose the Company to potential loss.Â Ld. Senior Counsel further submits that for nearly 28 years of his service life with the Company, the Writ

Petitioner has not been found to be guilty of any misappropriation or laches in administrative work.Â Like all other officers of the Company, the Writ

Petitioner depended upon one Mr. Tapan Bose, Insurance Agent to assist in the

formalities connected to issuance of Cover

Notes and Policy Documents.Â It has never been the case of the Company in the DP that the Writ Petitioner/CSO acted with ill-intent to ensure that

the Company did not benefit financially from the policies handled by him.Â On the contrary, the Writ Petitioner/CSO extended valuable service to the

Company by handling high value corporate clients who maintained policies with the Company worth several crores of rupees.

Therefore, Mr. Bhattacharyya submits that presumption of guilt has overshadowed the lack of sufficiency of evidence in the DP.Â The DP failed to

attend to the fact that there arose a systemic glitch connected to compliance of procedure by the Company itself and, no case for individual culpability

can be thus made out.

In support of his submissions Mr. Bhattacharyya relies upon the following authorities:-

i) 2002 (7) SCC 142 (at Paragraphs 3 & 7) on the point of the sufficiency of evidence required to be noticed in the DP.

ii) AIR 2012 SC 3285 (at Paragraphs 21, 23 & 24) on the point that the Company cannot take advantage of its own mistakes. iii) 2008 (1) SCC 514

(at Paragraph 20) on the point of the principles necessary to be kept in mind while assessing evidence in a DP.

iv) 2004 (10) Scale 578 (at Paragraphs 15 & 19) on the point that the principles of The Evidence Act do not apply to a DP. v) 2016 (16) SCC 645 on

the extent of judicial review.

Having heard the parties and considering the materials placed, this Court arrives at the following findings:-

A) That the Respondent/Writ Petitioner has admitted to following the administrative procedure in vogue connected to preparation, filing and issuance of Cover Notes of insurance policies.

B) That due to fortuitous circumstance involving the minibus in issue in the present case, the prevalent less than fool proof administrative procedure in place blew up in the face of, not only the Writ Petitioner/CSO but, also the Company.

C) That the point raised by the Writ Petitioner/CSO connected to the defence of the Company in the MACT case on the basis of a xerox copy of the

first Cover Note connected to the Bajaj Motorcycle in issue but, used to admit

liability in the subsequent accident involving the minibus, cannot be treated to be an evidence of no consequence.

D) Possibly being aware of the prevalent procedural deficiencies, the Company decided to make an issue of it by concentrating attention on the writ petitioner/CSO and, therefore, away from its systemic shortcomings.

E) In the DP it has not been conclusively proved that the writ petitioner/CSO individually benefitted from the miniscule amounts received as premium

towards two Cover Notes which became the subject matter of attention in the DP.Â The Company also could not explain the need to defend itself in

the claim petition before the MACT on the basis of the xerox copy of the original Cover Note, without applying its mind to the fact that the original

Cover Note belonging to the Bajaj Motorcycle must be presumed to be lying with its owner.

F) It also stands to reason that in 28 years of his service life there has been no charge of misappropriation or corruption against the Writ

Petitioner/CSO.Â The only allegation relates to the two Cover Notes in issue and, the Company now intends to camouflage its administrative

deficiencies as correctly noticed by the Ld. Trial Court from the evidence taken in the DP.

G) Therefore, the Ld. Trial Court has made a sound observation that the appraisal of evidence at the level of an adjudicator in a DP is of no value if

such appraisal does not produce a just result.

H) It is trite law that a blinkered appreciation of evidence in the DP producing a patently unjust result can be interdicted in judicial review.

I) It also stands to reason that the removal of the writ petitioner from service after contributing to the Company for 28 years without any evidence of

misappropriation, as admitted in the DP, represents a situation which has the potential of shocking the conscience of this Court upon noticing the

eventuality of an unjust result.

In the backdrop of the above findings, this Court is of the considered view that the issue in this appeal once and for all deserves a dignified quietus.Â

After nearly three decades of service it will tantamount to denial of substantive justice if the proceedings will be kept pending against the

respondent/writ petitioner.

Accordingly, on consideration of the records and materials before us, FMA 319 of 2014 is dismissed.

There will be, however, no order as to costs.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.

I agree.