

(2004) 08 SHI CK 0012
In the High Court Of Himachal Pradesh

Ishwar Lal Chaudhari and Another	APPELLANT
Vs	
National Insurance Company and Others	RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2004) 3 ACC 461

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Judgement

V.K. Gupta, C.J.—This appeal u/s 173 of the Motor Vehicles Act is at the instance of two persons, Ishwar Lal Chaudhary and Sajjan Singh (respondent Nos. 2 and 3 in MAC Petition No. 16-NL/2 of 90/1989 who claim to be the owners of vehicle No. CHN-7437 (motor cycle) which hit deceased Sulemaa on 17.4.1989 when he was going on a bi-cycle on Nalagarh Swarghat road at about 7a.m. Following five issues were framed for trial by the learned Tribunal:

1. Whether Shri Suleman died due to the rash and negligent driving by respondent No. 3 Sajjan Singh of vehicle/motor cycle No. CHN-7437, as alleged? -OPP
2. Who was the owner of the vehicle No. CHN-7437 at the time of Accident? Onus kept common on petitioners and respondents.
3. Whether the petitioners are entitled to any compensation, if so, to what amount and from whom? -OPP
4. Whether the Insurance Company, respondent No. 4, is not liable to pay the compensation, as alleged by it in the written reply? -OPR
5. Relief.

2. The learned Motor Accident Claims Tribunal-II, Solan, Camp at Nalagarh vide its judgment dated 11.10.1993 passed in the aforesaid clam petition, which is under challenge in this appeal, passed an award of Rs. 65,000/- in favour of the

claimant-respondent Nos. 3 and 4 in this appeal. (Claimant-respondent No. 4 Sairan has since died). Even though the Tribunal passed the award in favour of the aforesaid claimants, it absolved the Insurance Company, respondent No. 1 herein (respondent No. 4 in the claim petition) of its liability to pay the award amount and correspondingly, therefore, fastened the liability to pay the award amount, jointly and severally upon the appellants, who were respondent Nos. 2 and 3 in the claim petition. In coming to the conclusion that the insurer was not liable to pay the award amount and that the appellants were liable to pay the same, jointly and severally, the learned Tribunal in paras 15 and 16 of the judgment, while dealing with Issue Nos. 3 and 4 apparently placed his reliance upon the fact that the contract of insurance was subsisting between respondent No. 2 Arvind Kumar and respondent No. 1 National Insurance Company and since the ownership of the vehicle had been transferred before the date of Accident in favour of the appellants, the said contract of insurance between respondent Nos. 1 and 1 could not be given effect to, insofar as the liability of the Insurance Company qua satisfying the award is concerned. Paras 15 and 16 of the impugned judgment being apposite are reproduced hereunder for our ready reference. These read thus:

15. As regards the question as to who is liable to satisfy the award, the respondent No. 1 being not the owner of the vehicle at the time of the occurrence of the Accident cannot be made liable to satisfy the award. Since the respondent No. 1 is not liable, the Insurance Company can also not be held to be liable, because per insurance policy, copy Ext. R-3, the Insurance Company is liable to indemnify respondent No. 1 and none else. Accordingly, it is held that the petitioners are entitled to recover the aforesaid amount of compensation from respondent No. 2 the owner of the vehicle and the Respondent No. 3, who caused the Accident by driving the vehicle rashly, issue has been answered Accordingly.

issue No. 4.

16. In view of the discussion under Issue No. 3, it is held that the Insurance Company is not liable to satisfy the award. Issue has been answered Accordingly."

No other reason was assigned by the Tribunal in absolving the Insurance Company of its liability to satisfy the award.

3. During the course of hearing of this appeal, I have had the opportunity of seeing on the record of the Tribunal a document exhibited as Ex. R-4 (at page 69 of the Tribunal's record) which is purported to be a certificate of insurance bearing No. 497217 with respect to Policy No. 403002/6202688/89 covering vehicle No. CHN-7437. In column No. 3 of this certificate "14th April, 1989" has been shown as the effective date of commencement of insurance. As noticed above, the Accident took place on 17th April, 1989 i.e., 3 days after 14th April, 1989, the date shown in the certificate of insurance from which the commencement of insurance would be effective. So far so good.

4. On the record of the Tribunal at page 62 is the copy of Insurance Policy No. 403002/6202688/89 with respect to the same vehicle in which the effective date of commencement of insurance has been mentioned as "19.4.1989" and the date of expiry of this insurance is 18.4.1990. At the bottom of Ex. R-3 two important facts are noticeable which are columnized and these are as under:

1. Cover Note No. and date 231046 14.4.1989 2. Receipt No. and date 033856 17.4.1989.

As per Ex. R-3 effective date of commencement of the insurance is 19.4.1989 whereas, as per Ex. R-4 this date is 14.4.1989. The difference is very, very material because the Accident took place on 17.4.1989. If Ex. R-4 is a valid document and through it an insurance has validly been brought about and effected, then the vehicle shall be deemed to have been insured on 14.4.1989, i.e., before the date of the Accident, but if Ex. R-4 is not a valid document and Ex. R-3 alone is a valid document then the vehicle, as on the date of Accident surely has to be considered as not being insured. Thus the aforesaid two documents are irreconcilable, with respect to the effective date of commencement of the insurance and unfortunately, very, very unfortunately none of the parties in the Tribunal tried to bring about any conciliation about these two conflicting dates viz., as to why did Ex. R-4 mention a different date of commencement of the insurance as compared to Ex. R-3.

5. Naresh Kumar, Branch Manager, National Insurance Company Solan appeared as witness of the Insurance Company (R.W. 2) on 12th May, 1993 in the Tribunal and the following statement was recorded by the Tribunal as far as he is concerned:

R.W. 2, (Witness of the Insurance Company)
12.5.1993.

Statement of Shri Naresh Kumar, Branch Manager, National Insurance Company, Solan.

On SA.

I have brought the register regarding the payment of premium as well as the certified copy of the policy. The certified copy of the policy is Ex. R-3.

xxx xxx (Counsel for respondent No. 1).

It is correct that the certificate of insurance Ex. P-4 is issued by an officer of our Company. Self stated that the format on which certificate has been issued was out of use at the time when the certificate was issued and the officer, who issued the same was not authorised to issue the certificate. It is correct that the officer who has issued certificate Ex. R-4 is still an employee of the Company.

xxx (By respondent Nos. 2 and 3).

Nill-Opp. given.

xxx xxx (By the learned Counsel for the petitioner)

I have not brought these instructions vide which the format of certificate Ex. R-4 has been declared obsolete. We have initiated disciplinary proceedings against the employee who had signed Ex. R-4 I have not brought the file of disciplinary proceedings today.

RO and AC.

Neither this witness himself stated any fact about the aforesaid irreconcilable conflict between the two dates nor did any Counsel, either in examination-in-chief or in cross-examination, or for that matter in re-examination ask any question to this witness by way of explaining the aforesaid irreconcilable conflict in the two dates.

6. Why and under what circumstances was Ex. R-4 issued and why and under what circumstances were the dates of commencement of insurance different in Ex. R-4 and Ex. R-3, even this discrepancy has not been explained, or attempted to be explained by any of the parties in the claim petition.

6. Various provisions contained in Chapter VII-A and Chapter VIII of Motor Vehicles Act, 1939 including Section 96(1) and (3) do point out that a certificate of insurance by itself brings about an enforceable factum of insurance of a vehicle, thus casting a liability upon the insurer to satisfy an award passed by the Tribunal against the owner of the vehicle in question. If indeed Ex. R-4 as a certificate of insurance was validly issued, undoubtedly the insurer is liable to satisfy the award, subject of course to the condition of the privity of contract between the insurer and the insured (who would be a legitimate owner of the vehicle) and of course subject to the fulfilment of all requisite requirements regarding the transfer of ownership of the vehicle from one person to another on the date of the Accident. The basic issue of course remains about the validity of Ex. R-4. If Ex. R-4 is indeed a valid document then a question may also have to be raised as to the conflict in the dates of commencement of insurance mentioned in Exs. R-4 and R-3.

8. The aforesaid is a very very vital aspect covering Issue Nos. 3 and 4 and yet neither the Tribunal took notice of the aforesaid discrepancies in the dates of commencement of the insurance nor unfortunately the parties made any attempt to bring about any conciliation in the aforesaid discrepancies. This Court, however, cannot shut its eyes to the aforesaid discrepancies since the truth has to be found out.

9. The case is Accordingly remanded to the learned Motor Accident Claims Tribunal-I, Solan (Shri Surjit Singh, District and Sessions Judge, Solan) for holding an inquiry with respect to the aforesaid limited, the only aspect and submitting a report to this Court on or before the next date. With a view to enabling the learned Tribunal in completing the aforesaid inquiry very, very expeditiously I direct, first and foremost respondent No. 1 National Insurance

Company to adduce its entire evidence, documentary as well as oral on the next date to be fixed by me for hearing before the Tribunal. If, however, on the next date respondent No. 1 fails to adduce its evidence, its right to do so shall stand closed without any further reference. In that eventuality there being no need of any rebuttal evidence, the Tribunal shall return the matter to this Court with a brief report about the failure of respondent No. 1 to lead evidence so that, this Court draws an appropriate inference in the matter and treats the certificate of insurance Ex. R-3 as a valid piece of document. If, however, on the next date in the Tribunal fixed by me respondent No. 1 leads evidence, appellants herein shall have the opportunity of leading evidence in rebuttal which they would do and complete within four weeks from the date respondent No. 1 has led its evidence. If the appellants think that they need the assistance of the Tribunal for summoning any witness with or without record, within three days from the date of closure of the evidence of respondent No. 1 they may apply to the Tribunal for such assistance and the Tribunal on such application being received may issue summons to such * a witness.

10. The record of the Tribunal be sent back along with a copy of this order. The parties through their learned Counsel are directed to appear before the Tribunal on 28th September, 2004.

11. The appeal shall be listed for further proceedings in this Court on 19th November, 2004. By then the learned Tribunal shall prepare and submit its report to this Court.

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