**(1999) 03 J&K CK 0008**

**In the Jammu And Kashmir High Court**

**Case No :** L.P.A. (C) No. 19 of 1992

Kewal Krishan and Others — APPELLANT

Vs

Smt. Krishna Devi and Others — RESPONDENT

**Date of Decision :** 22-03-1999

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 147

**Citation :** (2001) ACJ 1029 : AIR 2000 J&K 89

**Hon'ble Judges :** O.P. Sharma, J;A. Mir, J

**Bench :** Division Bench

**Advocate :** V.R. Wazir, for the Appellant; H.L. Choudhary, for the Respondent

**Final Decision :** Dismissed

## Judgement

Sharma, J.—The only question involved in these letters Patent Appeals is, whether a copy of Insurance Policy produced by the insurer along

with the returns could be excluded from consideration by the Motor Vehicle Accidents Tribunal (for short the Tribunal) while determining the

extent of liability on the ground that it had not laid the foundation for reception of secondary evidence in accordance with the provisions of the

Evidence Act? This question has arisen because the Tribunal excluded attested copy of Insurance Policy produced by the insurer on the ground

that there was non-compliance of Order 11, Rules 12 and 14 of the CPC and Section 65(a) of the Evidence Act.

The 1st appellate Court reversed this finding and answered the question as follows :--

In the present case, it goes without saying that appellant-company had pleaded its limited liability and had discharged its obligation of placing a

copy of Insurance Policy on record. No objection was raised casting any cloud on the genuineness, existence or admissibility of the copy.

Therefore, it was not for the Company to make out a case for production of secondary evidence and to prove the contents of copy. Nor could the

copy be excluded from consideration on that count.

2. The judgment is assailed by the Insured on the ground that it runs counter to the decision of a Division Bench of this Court in Oriental Insurance

Company Ltd. v. Smt. Savitri Kamal (CIMA No. 57 of 1989 decided on 13-12-1990) and also against the law because a duplicate copy of a

document cannot be admitted in evidence without following the provisions of the Evidence Act.

3. The contention of Mr. Wazir, appearing for the appellants is that the learned Single Judge could not have ignored the judgment of a larger Bench

of this court. He also argued that the facts of case decided by the Supreme Court and relied by him are distinguishable.

Mr. Choudhary appearing for the respondents, however, supports the judgment on the ground that it is in accord with the law laid down by the

Apex Court.

4. First of all we may notice the judgment of a Division Bench of this Court in Savitri Kamal's case (supra), where it has been observed as follows

:--

The fact remains that the original Insurance Policy has not been produced before the Tribunal and there is nothing to show the extent of liability

that the Company had incurred while covering the risk of the vehicle. The production of the Carbon copy of the schedule by the Insurance

Company can at best be seen as an attempt to produce the Secondary evidence of the policy of Insurance. But even for that no foundation had

been laid by the Company before the Tribunal for the reception of said secondary evidence u/s 65 of the Evidence Act.

The learned counsel for the respondents has cited before us three judgments reported in Ajit Singh Vs. Sham Lal and Others, on the point of that

where the Insurance Company fails to produce the Insurance Policy or prove the same in accordance with law, then it shall have to be presumed

that the liability of the Insurance Company is unlimited.

This observation is, however, directly opposite to the Judgment of the Apex Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , but before it is noticed, a brief resume of the facts is necessary.

5. It is admitted case of the parties that the insurer had produced attested copy of the Insurance Policy along with written-statement and also

pleaded that its liability was limited to Rs. 15,000/- per passenger in case of death. The Tribunal has also referred to the plea of the Insured

regarding the statutory liability of the insurer, but without producing the original policy.

6. Although in the absence of evidence led by the insured to prove that the liability of the insurer was unlimited, it was not necessary to prove the

contents of the insurance policy, yet by way of abundant caution, the Insurance Company examined its Branch Manager to prove the same. His

evidence has been rejected by the Tribunal not on the ground that the copy is not attested by an officer authorised to attest it, but only because no

foundation for leading secondary evidence was laid. This fact has even escaped notice of the learned Single Judge. So the question involved is,

whether the attested copy of Insurance Policy produced by the insurer was admissible without formal proof; and if so, who is the officer competent

to attest such copies? This question has been answered by a Division Bench of Pun-Jab and Haryana High Court in United India Insurance

Company Ltd. Vs. Kamla Rani and Others, holding that :

Under Sub-clause (h) of section 2(17) of the Code of Civil Procedure, every officer in the service or pay of the Government or remunerated by

fees or commission for the performance of any public duty is a public officer. This definition can safely be taken in the ordinary sense to be the

definition of a public officer. Therefore, when the Governmental company is required to issue the certificate of insurance policy of the insurance in

the form prescribed by the Government and maintain the register of the policies and when the Government is empowered to issue directions to the

insurance companies, it can safely be held that policies of insurance or certificate of insurance and cover notes issued by the companies in

performance of their statutory duties can be classified as public documents within the meaning of Section 74 of the Evidence Act. When certificate

of insurance/policy issued by the Insurance company is a public document, the same can be proved by production of a certified copy u/s 77 of the

Indian Evidence Act. We are, therefore, of the opinion that a certified copy of insurance policy produced by the insurance company which issued it

is admissible in evidence without any formal proof of it. If the insured i.e. the owner of the vehicle disputes the correctness of the said certified

copy, it is for him to produce the original which will be in his custody only. We are, therefore, of the opinion that certified copy of insurance policy

is admissible in evidence u/s 74 read with Section 77 of the Indian Evidence Act without any formal proof. We, therefore, overrule the decisions in

Malwa Bus Service (P) Ltd. v. Amrit Kour, 1988 ACJ 190 (P & H) and The Oriental Fire and General Insurance Co. Ltd., Chandigarh Vs. Smt.

Chandrawali and Others, .

We respectfully agree and hold it to be correct proposition of law. In our view, liability of the insurer is to indemnify the insured in accordance with

the terms of the policy. In order to escape liability to pay compensation to the victim of the accident, it is for the insured to prove that insurer's

liability is unlimited. Although the Insurance Company in this case has pleaded limited liability by producing a copy of the Insurance Policy, yet the

owner/insured neither controverted this plea nor produced any evidence to the contrary. So there was no reason for the Tribunal to hold that the

liability of the insurer was unlimited.

7. Moreover, the Tribunal excluded copy of the policy from consideration on the ground that neither section 65 of the Evidence Act nor Order 11,

Rule 12 were observed and this also appears to be the view expressed in Savitri Kamal's case which the learned Single Judge did not notice.

A similar argument was advanced before a Division Bench of Kerala High Court in Rajan v. Sukumaran 1977 ACJ 778 : 1997 AIHC 2073.

While rejecting the contention, the Bench held as under (Paras 21 & 22 of AIHC) :--

The counsel for the appellant vehemently argued that the respondent No. 2 has not produced the original policy or taken any steps to call upon

the insured, the owner of the vehicle to produce the original policy so as to receive the copy of the policy produced along with the petition as

secondary evidence. In support of his contention, the counsel for the appellant made reliance upon the observations made by a Division Bench of

the Punjab and Haryana High Court in The Oriental Fire and General Insurance Co. Ltd., Chandigarh Vs. Smt. Chandrawali and Others, and the decision of the single Judge of the Patna High Court in New India Assurance Co. Ltd. Vs. Gulam Rasool and Others . Though in those reported

rulings it has been held that the copy of the policy produced by the insurance company without calling upon the insured to produce the original

policy and legally proving the copy of the policy as genuine is not admissible in evidence. In view of the judgment of the Apex Court in National

Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, . those decisions cannot be accepted and approved by us as good law. In para 9 of

the judgment the Supreme Court observed as follows :--

This court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice

in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof.

This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even

the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise

that in all such cases where the insurance company concerned wishes to take a defence in a claim petition that its liability is not in excess of the

statutory liability it should file a copy of the insurance policy along with its defence. Even in the instant case had it been done so at the appropriate

stage necessity of approaching this Court in civil appeal would in all probability have been avoided. Filing of a copy of the policy, therefore, not

only cuts short avoidable litigation but also helps the Court in doing justice between the parties. The obligation on the part of the State or its

instrumentalities to act fairly can never be over emphasised.

From the above observations of the Supreme Court it is clear that it is the duty of the insurance company to produce a copy of the insurance policy

to substitute the contention with regard to the limit of their liability. Therefore, the principles regarding production and admission of documents as

contemplated under Order 11, Rules 12 and 14 and Order 12, Rule 2 of the CPC and production of secondary evidence under Sections 64 and

65 of the Evidence Act have no application. Therefore, the appellant cannot contend that the copy of the policy produced by the insurance

company in this case cannot be accepted in evidence since the procedure laid down under the law for producing secondary evidence is not

complied with by the insurance company.

This, in our opinion, is the correct legal position and therefore, we uphold the judgment impugned in the appeal. We may however, add that the

decision in Savitry Kamal's case was I used on the decisions of Punjab and Haryana High Court which stand impliedly overruled by the judgment

of the Apex Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, . So it is no longer good law.

In view of the above, we find no (sic) appeals which are dismissed accordingly. No order as to costs

 