
(2013) 01 AHC CK 0337

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24572 of 2008

National Insurance Co. Ltd.

APPELLANT

Vs

Additional District Court No. 8, Etawah and Others

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152, 153

Motor Vehicles Act, 1988 — Section 147, 147(4), 173

Penal Code, 1860 (IPC) — Section 279, 304A, 427

Citation : (2013) 1 AWC 600

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Heard learned counsel for the petitioner and learned standing counsel. Brief facts of the case are that on 1.4.2005, at about 9.30 a.m., Rama Kant Tewari alongwith his brother Uma Kant Tewari were standing near Udaipura Roadways Workshop, Farrukhabad Road after parking their motorcycle. A tanker bearing registration No. U.P.-78-3-7574 was being driven in careless and negligent manner, which hit Rama Kant Tewari, as a result of which, he succumbed to the injuries at the spot. His brother also sustained injuries. In respect of this incident, a case on crime No. 19 of 2005, u/s 279/304A/427, I.P.C. was registered at Police Station Basrehar, district Etawah. On account of accident, the local public reached at the spot and caught hold the driver. The deceased Rama Kant Tewari was an employee of U.P. State Roadways Transport Corporation and was earning Rs. 4,864 per month at the relevant time.

2. In respect of the aforesaid accident, the wife of the deceased alongwith other filed a Motor Accident Claim, which was registered as M.A.C.T. No. 274 of 2005. The Motor Accident Claims Tribunal, after hearing the parties including the insurance company (petitioner herein), allowed the claim petition and directed the insurance company to pay compensation amounting to Rs. 5,15,356 to the

claimants vide its judgment and order dated 13.12.2006.

3. After the aforesaid award the insurance company filed a review application under Sections 151, 152 read with Section 153 of the Civil Procedure Code, praying therein to modify the aforesaid award and liability of paying compensation fixed upon the insurance company may be discharged. The Motor Accident Claims Tribunal, after considering the objections and submissions advanced by the parties, did not find any ground to review its aforesaid award rejected the review application vide its judgment and order dated 4.3.2008.

4. Hence, the petitioner has filed the instant writ petition.

5. Learned counsel for the petitioner has contended that the learned Tribunal committed an error in dismissing the review application overlooking the fact that if any fraud has been committed by the claimant or the owner of the vehicle and obtained the award in their favour, the insurance company has a right to move an application before the Tribunal for rectification of the award and the Tribunal is under duty to correct such award which is obtained by fraud. The Tribunal has relied upon the statement of the owner that his vehicle was insured but the correct fact is that the premium deposited through cheque by Anil Kumar Yadav [owner of the Tanker] towards insurance was dishonored by the Bank due to insufficiency of the amount in the account of the owner. It was further pointed out that the policy was also cancelled by the insurance company, which fact was also communicated to the petitioner.

6. A perusal of the order sheet shows that vide its order dated 14.8.2008 this Court directed for issuing notices to respondents Nos. 2 to 8 but there is no service report as to whether they have been properly served or not. However, since the main question involved in this case is as to whether against the award review application is maintainable or not before the Tribunal, we proceeded to hear the matter finally and also heard standing counsel appearing for opposite party No. 1.

7. Relying upon a decision of the Apex Court in *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, , counsel for the petitioner submitted that no Court or Tribunal can be regarded as powerless to recall its own order, if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim. In the instance case, the insurance company has brought on record several new facts to show that the vehicle was not insured with the petitioner on the date of accident and the owner of the Tanker was also aware about the said fact but even then the review application has been rejected causing serious injustice to the petitioner.

8. Section 173 of the Motor Vehicles Act, 1988 deals with the appeals and provides that any person aggrieved by an award of a Claims Tribunal may, file an appeal to the High Court. There is no dispute in the fact that power of the review has not been vested on the Motor Accidents Claims Tribunal by the Act and as such the proper recourse available to the petitioner was to file appeal as provided

under the aforesaid Section. It is well-settled that the appeal is in continuation of the Suit.(Bay Berry Apartments Pvt. Ltd. and Another Vs. Shobha and Others, and Rachakonda Narayana Vs. Ponthala Parvathamma and Another,).

9. In *United India Insurance Co. v. Rajendra Singh* (supra), which has been relied upon by the counsel for the petitioner, the claimants have played fraud and the stand of the Insurance company was that after the award the Insurance company received a report prepared by the Assistant Sub Inspector of Police which has a narration that Sanjay Singh and Rajendra Singh received injuries under different circumstance at a different place altogether. When these new facts came to the knowledge of the insurance company, they moved an application for recall which was rejected solely on the ground that the Tribunal has no power of review except to correct any error in calculating the amount of compensation and hence the Tribunal dismissed the application for recalling the awards. The High Court also rejected the writ petition. When the matter reached to the Apex Court, the appeal was allowed while observing that the allegation made by the appellant insurance company that claimants were not involved in the accident which they described in the claim petition, cannot be brushed aside without further probe into the matter. Consequently, the matter was remanded to the Tribunal to consider the claims afresh.

10. On the other hand in the instant case, the insurance company has not disputed the factum of the accident at the date, time and place of occurrence in which Ramakant Tewari died on the spot. During inquiry, the Tribunal framed issue No. 4 to the effect that as to whether the Tanker was insured and was being driven with valid papers by the driver. The Tribunal while dealing with the aforesaid issue found that vehicle No. U.P. 78-B/7574 was insured having its period valid from 21.3.2005 to 20.3.2006. The Tribunal also found other papers of the vehicle to be legally valid.

11. When the review application was filed before the Tribunal the owner of the Tanker namely. Anil Kumar Yadav filed objections indicating therein that for getting the vehicle insured, he has given a cheque No. 269035 dated 18.3.2005 worth Rs. 18,789. The insurance company failed to present the cheque within time and now they have come with a different story. The Tribunal while rejecting the recall application has also observed that in claim petition, the insurance company put appearance on 2.5.2005 and filed their written statement on 20.9.2005. In the written statement no where it was indicated that the cheque given by the owner of the Tanker toward insurance policy was dishonoured by the Bank. The insurance company itself remained idle for considerable long time and failed to present correct facts before the Tribunal.

12. At this juncture, it would be useful to mention that the petitioner does not dispute the quantum of compensation. Its effort is only to extricate itself from the liability to pay the compensation on the ground that there did not exist any valid coverage, or policy, as on the date of the accident. It is not in dispute that a policy was taken on 21.3.2005 for the vehicle and that the premium was paid

through a cheque The accident occurred on 1.4.2005. The petitioner states that the cheque issued by the respondent (owner of the Tanker) was dishonoured and as such liability cannot be shouldered upon the petitioner.

13. Section 147 of the Act requires that every motor vehicle must be covered by an insurance policy. The extent of coverage and other details are provided, in that section. There exist the facility for issuance of cover note at the initial stages, and thereafter, the Insurance Policy within a stipulated time. The object appears to be to ensure that the necessary formalities are complied with within the time gap, so provided. In some cases, the policy itself may be issued straight away, depending on the nature of payment of the premium and other circumstances.

14. The liability of an insurer commences with the issuance of cover note or insurance policy itself, if it is issued straight away. The Parliament had visualized the contingency of the insurance coverage not materializing into insurance policy, on account of any factors, which may include dishonour of the cheque issued for payment of premium. Sub-section (4) of Section 147 of the Act describes the steps that are required to be taken by the insurer in such a case. It reads as under:

Section 147 (4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

15. From this it is clear that in case a situation emerges for cancellation of cover note the insurer must notify the cancellation thereof, to the registering authority, i.e., the Regional Transport Officer, within seven days from the date of expiry of the same. It is from the date of such notification that the liability of the insurer ceases to exist.

16. Thus, the facts of the present case are quite different than those referred to in Rajendra Singh's case (supra) and as such the case law relied upon by the counsel for the petitioner is not applicable in the case at hand. It may be added that it is not the case of the insurance company that the claimants have obtained the award by playing fraud as was the stand in Rajendra Singh's case (supra). Subsequent dishonour of cheque given by the owner of the Tanker is a different cause of action.

17. As averred above, if the insurance company was aggrieved by the award in any manner, the proper course available to them was to file an appeal as provided u/s 173 of the Act. There is no provision for review of the order under Rule 21 of the Central Motor Vehicles Rules. 1989. The recall application was rightly rejected by the Tribunal as it has not found that fraud in any manner has

been committed by the claimants while obtaining the award.

18. Before parting, I would like to point out that the instant writ petition was filed against the award dated 13.12.2006 and this Court while entertaining the writ petition has not granted any interim order in favour of the petitioner. Since the date of award more than six years have elapsed and as such, there is every possibility that the award might have been executed. Counsel for the petitioner is not in a position to inform as to whether the compensation has been paid to the claimants or not. In view of the above discussions, the writ petition is hereby dismissed. Costs easy.