
(2013) 04 BOM CK 0110

In the Bombay High Court

Case No : F. A. No. 66 of 2013 and Civil Application No. 2147 of 2010

National Insurance Co. Ltd.

APPELLANT

Vs

Bapurao Vishvanath Kendre and Others

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Evidence Act, 1872 — Section 106

Citation : (2013) 3 ACC 347 : (2013) 4 ALLMR 219 : (2013) 4 MhLj 158

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : Rahul Mehta, Instructed by KMC Legal Venture, for the Appellant;

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—Heard. This is an appeal by insurance company. Learned Advocate for the appellant has raised following points in support of the appeal:

(A) Claimant gave the particulars of insurance certificate by describing serial number of insurance certificate to be No. 1809/0521.

(B) Insurance certificate number which has come on record through the witness who was employee of the department of Regional Transport Authority was summoned by the applicant, is serial No. 1999/05621.

(C) The original certificate has not come on record as it was not produced by the owner of the offending vehicle.

(D) The production of said certificate from the owner of the offending vehicle by summons or other wise was not sought by the claimant.

(E) In the result, due to disparity in the numbers of the insurance certificate, the fact of insurance was not proved. Therefore, it will have to be inferred that offending vehicle being insured with appellant company was not proved.

(F) Therefore the fact finding done by the Tribunal that offending vehicle was

insured with the appellant is erroneous in law.

2. It is seen that insurance company chose to remain satisfied barely by relying upon its written statement. No efforts were made by insurer-appellant to bring on record any documentary evidence or any affidavit to traverse the claimant's plea that vehicle was not insured with the appellant.

3. This Court has perused the judgment. It is seen that claimant has committed error in describing number of insurance certificate. The number of insurance certificate found in the office of Regional Transport Authority was consistent and it was duly proved that insurance of subject vehicle was done under Insurance Certificate No. 1999/05621 and policy was valid upto 27-10-1999.

4. It has to be noted that it was within powers and control of the insurance company to bring before the Court either of things, namely:--

(a) The docket of the insurance from the office of appellant relating to certificate No. 1999/05621 to show that it pertained to some other motor vehicle.

(b) To have filed on the affidavit or any other evidence showing that insurance docket of such series and number was not at all in existence.

(c) To have filed affidavit of employee/officer concerned denying fact of insurance.

5. A clarification by statement on oath by the insurance company to deny that the insurance of either description brought on record by the claimant do not find part of insurance policy issued by the insurance company, was necessary. Such denial could have been the positive act of rebuttal. Bare denial in the written statement cannot stand on par with the requirement of leading evidence by denial by statement on oath.

6. Such denial was necessary since the matter as to whether any such serial number of insurance certificate was at all in existence is always matter of personal knowledge of the insurer.

7. Section 106 of the Evidence Act fasten burden on the person for a party having exclusive, specialise or personal knowledge of the fact, to prove it.

8. The fact of the matter as to whether any insurance cover with the said number at all existed on the dockets of the insurance company is matter of personal knowledge of the insurer. Failure on the part of the insurance company to present a witness to come up to depose and deny existence of such fact is liable to be construed adverse.

9. Since the appellant chose to rely only on the denial now it cannot blame the Tribunal for its reliance on the evidence brought by the claimant and acceptance of evidence which created and revised a probability of existence of fact of insurance as claimed.

10. Insofar as aspect of disability is concerned, the tribunal held that the claimant had proved type of treatment he had taken in Bhagwati hospital. The

description is as follows:

7. As far as the quantum of compensation is concerned, the applicant has stated that in the accident he sustained serious injuries and was admitted Bhagwati Hospital. He sustained fracture of shaft femur of right thigh with degloving injury to left foot. The medical papers are on record. He was operated for fracture and open reduction was done. He was referred to S.K. Patil General Hospital, Malad for plastic surgery of left leg and on 24-5-2000 debridement of wound in left foot was done and on 13-6-2000 skin grafting was done in the said hospital. He was discharged from the hospital on 12-5-2000. Taking into consideration the serious injuries suffered by the applicant I am of the opinion that he is entitled to an amount of Rs. 20,000/- for pain and suffering. He has placed on record disability certificate issued by Dr. C.P. Manwani. His disability has been assessed to 35%.

(quoted from Page 24 of the paperbook)

11. The point raised by the insurance company is that disability should have been proved by evidence of medical practitioner.

12. In the background that all treatment details and description of injuries had come on record and that the claimant who was present before the Tribunal was seen by the Court, Court has believed the disability. It is however not shown that document relating to injury and medical treatment were disputed and denied. In this background it would be safe to believe that the disability was duly proved, and oral evidence of medical practitioner is not necessary.

13. When the extent of disability was seriously disputed, this Court had called upon learned Advocate for the appellant to describe exact nature of disability which was accepted by the tribunal to be to the extent of 35%.

14. Learned Advocate for the appellant was not able to state description of disability on the ground that document supplied to him by the appellant-insurance company did not comprise of medical papers referred in paragraph 7.

It is thus seen that learned Advocate was asked to file the appeal barely on the copy of judgment.

15. This being civil appeal, the appellant has to demonstrate illegality committed and bare criticism on the judgment of trial Court can never suffice. Such criticism turns out to be slang and abusive. Grounds of appeal have to be detected from exact errors or illegalities and not like cheap and discourteous or uncharitable criticism.

16. The Member of tribunal had himself seen witness in witness box and noticed injuries suffered by him and was satisfied as regards treatment taken by the claimant. The satisfaction of Tribunal based on evidence cannot be faulted unless it is shown to be contrary to facts and/or the law.

17. It is seen that the compensation on which is awarded is of small amount of Rs. 45,000/- that too inclusive of no fault liability of Rs. 25,000/-. Therefore, this

Court is satisfied that present appeal is not worthy to be filed.

18. The insurance company has not even fully instructed learned Advocate, and has failed to place entire material before him for drafting the appeal.

19. It needs to be recorded that whenever appeal is filed without giving proper instructions to lawyers, it create inconvenience to lawyer and Court too. It is hoped that recurrence of such filing does not occur.

20. Learned Advocate made a request that he would produce injury certificate of disability at this stage. Considering magnitude of compensation and considering manner in which the advocate is instructed, request is rejected.

21. The amount of Rs. 25,000/- deposited in this Court be transferred to the tribunal for its disbursement in accordance with law.

22. Appeal is dismissed. Civil application does not survive and is dismissed.