
(2008) 07 CAL CK 0006
In the Calcutta High Court
Case No : F.M.A. No's. 2486-2487 of 2004

National Insurance Company Ltd.

APPELLANT

Vs

Suranjan Gurung and Others

RESPONDENT

Date of Decision : 09-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195(2), 340
Motor Vehicles Act, 1988 — Section 140, 166, 170, 173, 92A

Citation : (2008) 4 CHN 14

Hon'ble Judges : Partha Sakha Datta, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : K.K. Das, for the Appellant; Subir Banerjee, Jayanta Banerjee and Rukmini Basu Roy, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—These two appeals were heard together as those arise out of the same accident. By filing F.M.A. No. 2486 of the 2004, the Insurance company has challenged an award dated 9th April, 2003 passed by the learned Judge, Motor Accident Claims Tribunal, First Court, Jalpaiguri in M.A.C. Case No. 125 of 1998 thereby awarding a sum of Rs. 80,000/- to the claimant after deduction of any amount if received u/s 140 of the Act. In F.M.A. No. 2487 of 2004, the Insurance company has challenged an earlier order dated 6th October, 2001 passed by the Motor Accident Claims Tribunal, Jalpaiguri, in M.A.C. Case No. 124 of 1998 by which an application u/s 140 of the Act arising out of the same accident was disposed of by directing the Insurance company to pay Rs. 50,000/- to the claimant No. 2, the mother of the victim.

2. Being dissatisfied, the Insurance company has preferred these two appeals u/s 173 of the Act.

3. A short question arises for determination in these two appeals preferred by the Insurance company. It is an admitted position that a two-year-old child died of an accident. The only point raised by the Insurance company in these appeals

is that the vehicle was not covered by the insurance at the time of accident. There is no dispute that the accident occurred on 18th February, 1998 at 1.30 p.m. whereas the offending vehicle was insured for the first time under the Insurance company, the appellant before us, on the selfsame day. According to the Insurance company, the proposal for insurance and the premium was tendered to the company at 2.00 p.m. on the date of accident and as such, it had no liability in the matter of payment of compensation for any accident occurred prior to 2.00 p.m. on 18th February, 1998.

4. Before both the proceedings under Sections 166 and 140 of the Act, the Insurance company produced their duplicate carbon copy of insurance showing that the insurance was effective from 2.00 p.m. on 18th February, 1998 as mentioned in the copy; on the other hand, the claimant has produced xerox copy of the original copy, they obtained from the police authority, which shows that there is no mention of the figure "2 p.m." as appearing in the carbon copy filed by the Insurance company. The said document was certified to be the true copies of the original by the police authority and was marked as exhibits after objection.

5. In the proceeding u/s 166 of the Act out of which F.M.A. No. 2486 of 2004 arises, the learned Tribunal below by giving detailed reasons pointed out that the carbon copy, the Exbt. A, that has been produced before the Court by the Insurance company to convince that the insurance policy became effective from 2 p.m. was an interpolated one and that the time "2 p.m." appearing in the carbon copy marked Exbt.-A was subsequently inserted. It was found that the digit "2" was not the impression of the carbon and rather, it was the impression of the original print of the typewriter. Some other reasons were also given in discarding the said document. Thus, the Tribunal held that the Insurance company had interpolated the document.

6. Mr. Das, the learned Advocate appearing on behalf of the Insurance company, has laboriously contended before us that the learned Tribunal below erred in law in fixing the liability upon his client notwithstanding the fact that in the office copy maintained by his client it is specifically mentioned that the policy would be effective from 2 p.m. of February 18, 1998, whereas it is established from evidence that the accident occurred at 1.30 p.m. of that day. Mr. Das submits that Exbt.-5 produced by the claimant is merely a photocopy of the original he obtained from the police authority and there is every possibility of tampering with the same at the time of taking photograph. Mr. Das contends that if the photocopy was taken after erasing the digit 2 p.m. in the original, the photocopy will not show the said time. In other words, Mr. Das contends that in the absence of the original, the carbon copy produced by his client should be accepted as the Exbt.-5 has been marked as exhibit after objection. He, therefore, prays for setting aside the awards impugned herein.

7. Mr. Banerjee, the learned Advocate appearing on behalf of the claimant, has pointed out to us that the same gentleman, namely, one Utpal Dutta son of late Sukumar Dutta who was the Manager of the company affirmed the stay

application in both these appeals. While in F.M.A. No. 2487 of 2004, he stated that the policy was effective from 3.00 p.m., as it appears from paragraphs 3 to 7 of the application, in affirming affidavit in connection with the other appeal, he stated that the same was effective from 2:00 p.m. He further pointed out that the signature of the concerned officer and other typed portions on the two copies produced as Exbt.-A in both the proceedings vary in many respects and as such, it should be concluded that the Insurance company produced those manufactured documents before the Tribunal. He submits that there cannot be two different carbon copies of the same insurance policy. Mr Banerjee, therefore, prays for dismissal of these two appeals with exemplary costs.

8. After hearing the learned Counsel for the parties and after going through the materials on records we find that in the proceedings u/s 140 of the Act although nobody gave evidence on behalf of the Insurance company, the carbon copy of the policy was produced on its behalf and the same was marked as Exbt. A. However, in the proceedings u/s 166 of the Act, one Sri Barun Bagchi, the Administrative Officer who issued the policy, himself gave evidence and asserted that in the copy maintained by the company the commencement of the policy was mentioned as 2 p.m. of that day and the said copy was marked as Exbt.A.

9. He has admitted in his evidence that the premium register maintained by his office would not disclose the time of receiving the premium and such register was not even produced. Since the Lower Court Records of both the proceedings have come before us we had the opportunity of comparing the Exbt. A produced by the appellant in both the proceedings. It is not the case of the Insurance company that the copy of the policy is kept in triplicate and that two copies are preserved in the office. Even if we assume that two carbon copies are maintained by the Insurance company, we are surprised to find that the Exbt. A produced in the proceedings u/s 140 varies a lot from the Exbt. A produced in the proceedings u/s 166 whereas the Exbt. 5, the copy produced in both the proceedings by the claimant is the same and none of the Exbt.-A tallies with the Exbt. 5 in all respects. We find the following marked difference in the two Exbt. A produced in the two different proceedings by the Insurance company:

In the policy, the printed form describes the duration of the policy in the following way: From...a.m/p.m/on....

In the Exbt.-A produced before M.A.C.C. No. 124 of 1998, the aforesaid portion has been filled up in the following way:

From"2...p.m./18.02.98

In the Exbt.-A produced before M.A.C.C. No. 125 of 1998, the aforesaid portion has been filled up in the following way:

From 2 p.m/on 18.02.98

10. The signatures of the same officer appearing in the two documents are apparently not the same but those are of the same person made on two different

occasions.

11. What is most striking is that in one of the documents, two typed "x" marks have been utilised for deleting "a.m." though unsuccessfully, whereas in the other, six "x" marks have been used for the same purpose and the same extended till the word "p.m.". The Insurance company did not expect that those two exhibits would be placed one after the other for comparison in future and for that reason it recklessly used such interpolated documents. We have already pointed out in Exbt.-5, there is no trace of "x" marks nor is the figure "2" appearing in the space. It is rightly pointed out that the figure "2" appearing is not the impression of carbon.

12. It is true that the original policy to be preserved by the owner was not produced. The claimant is not supposed to be in possession of such document. They have produced the certified copy given by the police authority which is a xerox of the original. The Insurance company having taken leave u/s 170 of the Act, it was its duty to summon the original owner or the police authority for production of the original. It is admitted that the Insurance company did not take such step lest its forgery is established.

13. We, therefore, agree with the learned Tribunal below that the Exbt-A produced by the Insurance company was an interpolated one.

14. Mr. Das, as a last resort tried to convince us that the liability u/s 140 of the Act could not be shifted to his client and as such the said amount should be paid by the owner. In support of his contention, he placed strong reliance upon a decision of the Apex Court in the case of National Insurance Co. v. Jethu Ram and Ors. reported in 1998(2) TAC 805 (SC). In that case, it was contended that the payment under the old Section 92A of the Motor Vehicles Act is to be made by the Insurance company even if the condition of Insurance is violated.

15. In such circumstances, the Supreme Court held that if under the conditions of the policy, the insurer was not liable to pay any amount, the liability which accrues u/s 92A is not required to be borne by it. We fail to appreciate how the said decision can be of any assistance to Mr. Das unless it is held that the Insurance company had no liability at all as the accident occurred prior to the commencement of the insurance. In our view, once the vehicle is covered under the terms of the policy, it is for the insurer to make payment of the liability of the owner to the extent indicated in the policy be it u/s 166 or u/s 140 of the Act. The submission that the liability u/s 140 of the Act should be borne out by the owner even if it is covered by a valid insurance is a preposterous one.

16. We, therefore, find no merit in these appeals and those are accordingly dismissed with costs which we assess at 100 gms. each.

17. In view of our finding that the Insurance company has used forged documents in this proceedings being Exbt.-A in both the proceedings, we issue two separate rules u/s 340 of the Code of Criminal Procedure upon the Sri Barun

Bagchi, the D.W.I in the proceedings u/s 166 of the Act to show cause why an enquiry should not be made for the offence referred to in Section 195(2) of the Code for production of two forged documents marked as Exbt.-A in the two proceedings out of which these two appeals arise. The rules be served through the General Manager of the appellant. Rule returnable four weeks hence.

Partha Sakha Datta, J.

I agree.

Later:

18. Since we have dismissed both the appeals, the claimants are entitled not only to withdraw the statutory deposits made by the Insurance company while preferring these two appeals and also free to proceed with execution for realization of the balance amount.

19. The appellant is directed to deposit the balance amount in terms of the two awards less statutory deposit already made.

20. Let xerox certified copy of this judgment be given to the parties within a week from the date of making of such application.