(2009) 02 BOM CK 0105

In the Bombay High Court

Case No : F.A. No. 420 of 1993

New India Assurance Co. Ltd. — APPELLANT

Vs

Akhtar Jahangir Begum and Others — RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Citation : (2009) ACJ 2822

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : A.S. Osmanpurkar, for K.V. Kulkarni, for the Appellant;

Final Decision : Dismissed

Judgement

K.U. Chandiwal, J.—The insurance company (the appellant) has challenged the award of compensation passed by the Member, Motor Accidents Claims Tribunal, Aurangabad in M.A.C.P. No. 60 of 1990, on the ground that the accident has taken place on 22.12.1989 at 11.30 a.m. and there was no policy or cover note issued by the appellant insurance company and secondly, respondent No. 2 (owner) has later obtained the cover note from the appellant on 22.12.1989 at about 4.30 p.m.

2. The driver did not appear. Based on the available evidence, compensation of Rs. 1,26,000 was awarded with interest by learned Member.

3. The insurance company examined Rauf to show that he works on behalf of the insurance company for collecting the insurance premium and on 22.12.1989, Abdul Aziz came to him at 4.30 p.m. at R.T.O. and obtained cover note from him. Copy of the cover note is at Exh. 66, as the Development Officer, R.S. Baheti used to handover blank cover notes to him. He had handed over the amount of cover note to the Development Officer at 9 a.m. The Development Officer Baheti has accepted that he used to sign blank cover notes to be kept with the agents for issuing the same to the customers after they approach the agent and cover note was issued on 22.12.1989.

4. It was not necessary for the purpose of issuing cover note for the agent to sit in the compound of the R.T.O. only. The Development Officer has allegedly kept blank cover notes. Therefore, the insurance company cannot say that the owner of the truck practised fraud on the insurance company or on the agent. Learned Member blamed the very practice and procedure adopted by the insurance company and, consequently, observed that having kept blank cover notes by the Development Officer with the agent, the evidence of the agent or the Development Officer cannot be accepted.

5. Learned Member placed reliance to the judgment in the matter of New India Assurance Co. Ltd. Vs. Ram Dayal and Others, , in which it was observed that the insurance policy obtained on the date of the accident becomes operative from the previous midnight of the date of insurance and the insurance company is liable.

6. Learned Counsel has taken recourse to the judgment in the matter of New India Assurance Co. Ltd Vs. Smt. Sita Bai and Ors, . In the said case the Hon''ble Lordships found that the policy was issued on 2100 hours on 15.4.1987 while the accident has taken place at 10.00 hours on 16.4.1987 and commencement of the policy being issued after the accident, the insurance company cannot be fastened with the liability to pay compensation.

7. In the matter of National Insurance Company Ltd. Vs. Mrs. Chinto Devi and Others, , the question was when the insurance policy becomes effective and on analysing the legal position, the earlier view in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, , was held to be not a good law, in the light of subsequent pronouncement of the Apex Court. However, in the facts of the case, Hon''ble Lordships of the Apex Court directed deposit of claim amount in equal shares by the insurance company and the owner of the vehicle.

8. Now, reverting back to the facts of the present case, even if the contention of purchasing the policy on the same date of accident is accepted, the evidence adduced by the agent and the Development Officer of the insurance company by itself will not be acceptable as no record that the amount of premium was received at 4.30 p.m. on 22.12.1989 (as per Exh. 66) or that he issued cover note at 4.45 p.m. This is oral evidence adduced by the insurance company without support of documentation. Consequently, the claim that the insurance policy is being issued after the accident is difficult to digest and the findings recorded by the Tribunal in this scenario of the matter cannot be said to be perverse. The subsequent pronouncements of Hon''ble Supreme Court, referred above, will not be applicable to the instant case as in those insurance policies specific timing of issuing the cover note or the policy was referred. However, to repeat, in the instant case the cover note is totally blank as to at what time it was issued. Consequently, I do not find any merit in the appeal and it is accordingly dismissed. Civil Application No. 3046 of 1993 is also dismissed.