

(2011) 01 RAJ CK 0122

In the Rajasthan High Court

Case No : Civil Special Appeal (Civil) No. 32 of 1999 in Civil Miscellaneous Appeal No. 645 of 1991 and Civil Special Appeal (Civil) No. 30 of 1999 in Civil Miscellaneous Appeal No. 646 of 1991

New India Assurance Co. Ltd.

APPELLANT

Vs

Narendra Kumar and Another

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Evidence Act, 1872 — Section 58, 63, 65, 68

Citation : (2011) 3 RLW 2191

Hon'ble Judges : Mahesh Bhagwati, J; Dalip Singh, J

Bench : Division Bench

Advocate : Vinod Tyagi, for the Appellant; Sandeep Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Dalip Singh, J.—Both these intra-court appeals by way of letters patent were filed prior to the amendment of C.P.C. in the year 2002 against the judgment of the learned Single Judge dated 23rd March, 1999 on 28.04.1999. An accident occurred on 02.05.1998 involving a taxi-jeep bearing registration No. RST-1573, which was owned by the respondent-Jagdish.

2. As a result of the aforesaid accident, two claim petitions came to be filed before the learned Motor Accident Claims Tribunal, Dausa, which were decided by a common award dated 06.09.1991 allowing the claim petition filed by the claimants.

3. Being aggrieved by the award dated 06.09.1991, the appellant-insurance-company preferred an appeal u/s 110D of the Motor Vehicles Act, 1939 before the learned Single Judge.

4. The main contention of the insurance-company in the present appeals, as before the learned Single Judge pertains to the fact that the insurance-company had a limited liability u/s 95 of the Act.

5. The aforesaid plea of the insurance-company-appellant was not accepted by the learned Single Judge and the insurance-company has filed the present appeals against the judgment of the learned Single Judge dated March 23, 1999.

6. Before us, the learned counsel for the insurance-company-appellant, submitted the very same contentions, which were advanced before the learned Single Judge that the policy was an "Act only" policy and that the liability of the insurance-company was limited to the one provided under the Act i.e. so far as the passenger is concerned to Rs. 15,000/- and so far as third party passenger is concerned to that of Rs. 50,000/-.

7. It is not in dispute that the insurance-company-appellant before us did not lead any evidence before the learned Tribunal and only produced before the learned Tribunal the purported "True copy" of the insurance policy in support of that plea, though, none appeared on behalf of the insurance-company to prove the contents of the said "true copy" of the policy or the contents thereof.

8. Learned counsel for the appellant-insurance-company contended before us on the basis of the alleged "true copy" of the insurance policy, which was produced by the insurance-company as a "true copy" of the original where under IMT-13 insurance-company had prescribed the limit of liability for the death of or of bodily injury in respect of passengers as Rs. 15,000/- and so far as third party is concerned to Rs. 50,000/-, This document produced by the insurance-company as a "true copy" is available on record of the learned Tribunal on Page No. C-19/24, 25, 26 and 27 respectively and has been attested as a "true copy" by an Officer of the insurance-company.

9. On the basis of the above and more particularly since there is an endorsement of "admitted" by the counsel for the claimants, as contended by the learned counsel for the appellant-company, in terms of the aforesaid document, which is the contract between the parties, it was abundantly proved on record that the liability in the instant case was limited to the one mentioned in the said documents.

10. In response to the above, the learned counsel for the insured, owner of the vehicle respondent No. 2 submitted that the owner of the vehicle had produced on record the original policy document, which is available at Page No. C-19/22 and 23, and a comparison of the two documents one produced by the appellant insurance-company and one produced by the owner of the vehicle during trial clearly shows that the document produced by the insurance-company at page Nos. C-19/24 is not a "true copy" or a copy so as to fall within the scope of Section 63 of the Evidence Act as a secondary evidence on account of the fact that the two documents are not mechanically prepared from the same process and even the contents of the same are different. While the document produced by the owner is a typed document containing the names and the figures in typed and the document produced by the insurance-company is a hand-written document and that also a carbon copy, with the original hand written document

not having been produced. It is also not denied that the original policy produced by the insured is not the correct document or the original, as none appeared to contest the same.

11. It has further been stated that in the document produced by the appellant insurance company the names etc., have been given of the owner in "Devanagari" script (Hindi), whereas in the original document produced by the insured respondent No. 2 is in English in Roman script.

12. As such so far as the document produced by the appellant insurance-company is concerned, the learned counsel for the respondent No. 2 submitted that the same cannot be said to be either proved or at the same time can be taken and read in evidence, as it does not fall into any of the category of Section 63 of the Evidence Act and without having satisfied any of the condition of Section 65 of the Evidence Act read with Section 68 of the Act to be read in evidence.

13. Apart from the above, the learned counsel for the respondents submitted that so far as the endorsement IMT-13 in the original insurance policy produced by the insured is concerned, there are no figures mentioned with regard to the limit of liability, as would be evident from a perusal of Page No. C-19/24, where the aforesaid endorsement figures in the original document and has been left "blank" and in the alleged true copy the figures Rs. 15000/- and Rs. 50,000/- have been introduced subsequently.

14. Learned counsel for the respondents, therefore, contended that the document produced by the owner insured respondent herein, is the original document supplied by the insurance-company to the insured and shows that the same is a "comprehensive policy" in which as has been found by the learned Single Judge that an additional premium to the one specified under the Schedule of premium prescribed by the insurance-company has been charged and limits of liability under IMT-13 have not been specified neither in IMT-13 nor under the Schedule of premium on the policy document. Though in the document produced by the insurance-company, which is a carbon copy available at Page C-19/24 in ink the figures Rs. 15000 has been inscribed in the Schedule of the premium policy with regard to the limit of liability per passenger subsequently.

15. We have considered the aforesaid submissions and we find that so far as the contentions of the learned counsel for the respondent insured owner of the vehicle are concerned, there is a considerable force in the same. The two documents that of the original policy, which has been produced by the insured and the "true copy" produced by the appellant, which appears at page No. 19-C/24 are totally different and all the salient feature and distinction, which has been pointed out and as recorded above are apparent on the face of record. Thus, the document produced by the insurance-company before us cannot by any stretch of imagination be said to be a "true copy" of the original, which has been produced by the insured.

16. With a view to explain the above discrepancies and remove the doubt as to what are the exact contents of the policy some witnesses on the part of the insurance-company appellant ought to have been produced before the learned Tribunal to discharge the burden of the plea that had been raised by the insurance-company and to prove the documents, which had been produced by the insurance-company, as the true copy of the policy document, as this is essentially a question of fact as to whether the limits of liability had been fixed and in what circumstances had additional premium been charged by the insurer.

17. In any event the document produced by the insurance-company appellant does not comply with the requirement of Sections 63 & 65 of the Evidence Act so as to fall within the category and scope of secondary evidence so as to be admissible in evidence.

18. Since the limit of liability has not been prescribed in the original policy document, we are of the view that the insurance-company cannot rely upon their documents without leading evidence in support of the same or proving the same.

19. A perusal of the contents of the Schedule of the premium in the original policy document produced by the owner insured shows that as regards the limit of liability per passenger for which additional premium has been charged, there is no mention of Rs. 15000/- per passenger, which appears in the hand-writing in original ink in the carbon copy of the document produced by the insurance-company. This makes the document produced by the appellant suspicious and the doubts have not been cleared by the insurer by leading any evidence in trial.

20. Clause IMT-13, which has been relied upon by the insurance-company for limiting the liability, as it is said to contain the figures as Rs. 15000/- and Rs. 50,000/- respectively in respect of the limit of liability for passengers and third party in the document produced as a true copy is a separate sheet of paper as against the Clause forming a part of the page 2 and 3 of the original documents produced by the insured and which is an integral part of the policy document, which are contained in two sheets of paper printed on either side.

21. The aforesaid document (separate page) produced by the insurance-company containing the Clause IMT-13 also does not bear any endorsements or any certification that it is a true copy and, therefore, it cannot be said to be a part of the policy document produced by the insurance-company.

22. Learned counsel for the appellant-company submitted that since the document produced by them, which appears at Page No. 19-C/24, 25, 26, & 27 is concerned, same was admitted by the counsel at the time of admission of denial of documents and, therefore, appellant insurance-company was not required to prove the same and reliance was placed upon the provisions of Section 58 of the Evidence Act.

23. To the aforesaid plea, the reply of the learned counsel for the insured respondent No. 2 owner of the vehicle is concerned is that neither the owner of

the vehicle himself nor his counsel admitted the contents of the documents produced by the insurance company. The admission, if at all is by the counsel for the claimants namely, Jagdish and Madan Lal, which cannot be binding so far as the owner of the vehicle is concerned. This fact is not disputed that the admission is only by the counsel for the claimants and not by the insured respondent No. 2, as such the appellant can not take any advantage of the aforesaid.

24. We have noticed the aforesaid and we find that the aforesaid endorsement of "admitted" is by the counsel for the claimant-Madan Lal and so far as the claimant - Narendra Kumar is concerned it bears the endorsements "subject to objection" and there is no endorsement with regard to admission by the counsel for the respondent No. 2 the insured.

25. In that view of the matter, so far as the insured is concerned the aforesaid endorsements of "admitted" would be of no assistance and cannot be read as a circumstances against the insured. In these facts and circumstances the insurance-company was required to have led the evidence in support of the aforesaid plea and prove the policy and its contents.

26. We would, accordingly, hold that so far as the documents produced by the insurance-company, which is available at page No. C-19/24 to 27 cannot come to the aid of the appellant insurance-company in determining the controversy at hand and there being no other evidence led by the appellant, the appellants have failed to prove their defence.

27. We have perused the reasonings given by the learned Single Judge and we find that in the judgment it has specifically been recorded by the learned Single Judge, which has not been controverted before us that it was admitted at the bar by both the sides that the premium in respect of taxis for act only liability is Rs. 100 and in fact an additional premium was charged by the insurance-company in the instant case so far as the vehicle in question is concerned.

28. The learned Single Judge has, therefore, taken into account the fact of payment of the extra premium to hold that the liability of the Insurance Co. in the facts and circumstances were not restricted to the act liability only. Apart from the above, as has been noticed by us and stated herein above that the insurance-company had failed to specify the limit of the liability under the IMT-13 as Rs. 15,000/- in the case of passenger and Rs. 50,000/- in the case of third party in the policy document, while there is no such endorsement specifying the amount of liability and the policy being one of "commercial vehicle comprehensive policy" with additional premium having been charged the learned Single Judge in our opinion has rightly held in favour of the claimants and the owner of the vehicle, the insured that the liability of the insurance-company cannot be said to be limited to the one specified under the Act of Rs. 15,000/- in the case of passenger and Rs. 50,000/- in the case of third party.

Accordingly, we find no merit in these appeals.

These intra court appeals are, accordingly, dismissed.

The stay applications also stand dismissed.

There shall be no order as to costs.