
(2004) 09 BOM CK 0074
In the Bombay High Court
Case No : F.A. No. 675 of 2004

New India Assurance Co. Ltd.

APPELLANT

Vs

Roshan Bi Magdum and Others

RESPONDENT

Date of Decision : 23-09-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2005) 2 ACC 409 : (2005) ACJ 117

Hon'ble Judges : Abhay S. Oka, J

Bench : Single Bench

Advocate : S.V. Vidyarthi, for the Appellant; M.B. Kotak, for the Respondent

Final Decision : Dismissed

Judgement

Abhay S. Oka, J.—Admit. Respondent No. 1 waives service. Service on other respondents is dispensed with. Taken up for final hearing forthwith.

2. The appellant New India Assurance Co. Ltd. has taken exception to the judgment and award dated 9.3.2004 passed by the learned District Judge and Chairman of the Motor Accidents Claims Tribunal, Thane. By the said judgment and award, a compensation of Rs. 2,15,000 has been granted in favour of the respondent Nos. 1 and 3 on account of death of one Allabux Jamadar in a motor accident. Respondent No. 1 is the mother of the deceased who filed the claim petition. Respondent No. 3 is the widow of the deceased, who was opponent No. 3 in the claim petition. The respondent No. 2 is the owner of the vehicle involved in the accident. Respondent No. 1 in her claim petition alleged that the vehicle in question was validly insured with the appellant insurance company on the date of the accident. The challenge in this appeal to the impugned judgment and award is only on one ground. The contention of the appellant is that there was no evidence produced on record to show that the vehicle in question was validly insured with appellant insurance company on the date of the accident.

3. The learned counsel appearing for the appellant submitted that the certificate

allegedly issued by the R.T.O. by itself is not sufficient to prove that the vehicle was validly insured with the appellant. He submitted that the certificate issued by the R.T.O. does not mention the insurance policy number allegedly issued by the appellant. He submitted that the cash balance register maintained by the R.T.O. ought to have been produced. He submitted that the appellant examined one Vasudev Atmaram Sawant at Exh. 58 who deposed that the number mentioned in the R.T.O. certificate is neither code number of the Divisional Office at Thane nor the policy number of any policy issued by the said office. The learned counsel relied upon the judgment of the Division Bench of this court in *Oriental Fire & Genl. Ins. Co. Ltd. v. Dr. C.R. Purohit*, I (1999) ACC 138. Relying upon the said judgment of the Division Bench, he submitted that mere entry in the R.T.O. books referring to insurance company does not establish the fact that the vehicle in question was in fact insured with the insurance company. He submitted that the certificate of the R.T.O. was required to be discarded as a proof of valid insurance and there was no other evidence on record to establish that the appellant was the insurer of the vehicle involved in the accident on the relevant date.

4. The learned counsel appearing for the respondent No. 1 submitted that the appellant insurance company has not made any search in all of its Divisional Offices to find out whether any policy bearing the number which is mentioned in the R.T.O. certificate has been issued and the inquiry has been confined only to one Divisional Office. He relied upon another judgment of Division Bench of this court in *Bhalchandra N. Donge and Another Vs. Mohan G. Butala and Others*, . He also relied upon rule 289 of Bombay Motor Vehicles Rules, 1959. He relied upon certain judgments of the Hon'ble Supreme Court and contended that the provisions of the Indian Evidence Act, 1872 are not applicable to a Tribunal established under Motor Vehicles Act, 1939 or under the Motor Vehicles Act, 1988.

5. It is not in dispute that the respondent No. 1 produced certificate dated 2.6.1994, Exh. 55, issued by the Regional Transport Office, Bombay (C). The said certificate discloses name and address of the registered owner of the vehicle as on 18.4.1989, i.e., the date of the accident. It describes the details of the insurance policy as on that date. The period of policy is mentioned as 9.8.1988 to 8.8.1989. The name of appellant insurance company is mentioned and below the name of the insurance company, a number is mentioned as 015499.

6. The respondent No. 1 examined one Mahadev R. Kale, a junior clerk working in the office of the R.T.O. at Bombay. He stated that at the time of payment of tax, the applicant has to submit prescribed form duly filled in, taxation book and the insurance policy. He stated that if the policy is found to have expired on the date of submission of the application for payment of tax, the application is not accepted. He stated that if the application is accepted, an entry is made in cash balance register about the amount of tax paid, the receipt number, name of the insurance company, the validity period of insurance and the insurance policy

number. He proved the R.T.O. certificate at Exh. 55 in evidence. Certain questions were asked to the said witness in cross-examination about his personal knowledge of insurance policy in respect of the vehicle in question. He stated that the relevant cash balance register was not traceable.

7. The appellant insurance company examined one Vasudev A. Savant who stated on oath that-

"As per our record a vehicle bearing registration No. MRR 8614 was not insured with our company for the period from 9.8.1988 to 8.8.1989. Shown the R.T.O. certificate, Exh. 55. The number 015499 mentioned therein is neither the code number of Divisional Office of Thane or policy number of any policy issued by the said office."

In response to the court's question the witness has stated that-

"I cannot say so in respect of any other office of our company as I have not contacted all the Divisional Offices."

In cross-examination he stated that he had called for information from the Mumbai Regional Office-IV and the said office informed that the policy certificate/cover note was not issued by that office.

8. The factual position which emerges from the said evidence is that the R.T.O. certificate at Exh. 55 mentions the validity period of the insurance policy and the number of the policy. The witness examined on behalf of the appellant deposed that the number mentioned in the R.T.O. certificate is neither code number of the Divisional Office at Thane nor policy number of any of the policy issued by the said office. In response to the court's question, he admitted that he had not contacted all the Divisional Offices to verify whether any policy bearing such number was issued. Thus the search made by appellant is confined only to one Divisional Office at Thane and one Regional Office, i.e., Mumbai Regional Officer-IV. It is not the case of appellant insurance company that the cover note or policy bearing six-digit number is never issued by the appellant company.

9. In the light of the position which emerges from the facts of the present case, reference will have to be made to the judgment of the Division Bench of this court in the case of Oriental Fire & Genl. Ins. Co. Ltd., I (1999) ACC 138. In the case before the Division Bench there was a dispute as to whether the person impleaded as owner of the offending vehicle was the real owner of the vehicle involved in the accident. The appeal before the Division Bench arose out of a civil suit filed by the respondent Nos. 1 to 3 therein for claiming compensation. The Division Bench confirmed the finding recorded by the trial court that the vehicle was not owned by the original defendant No. 2 in the suit. The case made out by the insurance company was considered by the Division Bench in the context of the specific case of the insurance company that the person who was impleaded in the suit as defendant No. 2 was not the owner of the offending vehicle. The learned trial Judge had drawn adverse inference against the insurance company

for not producing a copy of the policy during the trial. The Division Bench held that the insurance company could not have produced the original policy or the certificate of insurance as the original policy or the insurance certificate must be with the owner. Considering the facts of the case, the Division Bench observed that a mere entry in the R.T.O. book referring to the name of the insurance company does not establish the fact of insurance. Reading the judgment of the Division Bench it appears that it was not the case where the policy number was purportedly mentioned in the R.T.O. certificate.

10. The judgment relied upon by the learned counsel appearing for the respondent No. 1 in the case of Bhalchandra N. Donge and Another Vs. Mohan G. Butala and Others, , will have to be considered. Para 7 of the said judgment reads thus:

"(7) Next question, which falls for our consideration, is whether the respondent No. 4, insurance company, is liable. In their application for compensation, the appellants have stated that the truck was insured with the respondent No. 4 under the cover note No. 60585 for the period from 26.12.1979 to 25.12.1980. In his written statement, respondent No. 2 stated that the correct cover note number is 60588. The respondent No. 2, however, failed to produce the insurance policy. The respondent No. 4 contended that the truck was not insured at all. The appellants produced material on record to show that at the relevant time, the truck was insured with the respondent No. 4. Madhukar Banke, an officer working with R.T.A., deposed on the basis of entries made in the record that respondent No. 4 was the insurer in respect of the truck under policy bearing No. 59955 for the period between 18.12.1979 and 17.12.1980 and that again the truck was insured for the period between 26.12.79 and 25.12.1980 under policy bearing No. 65085. Vijayak Ghunakikar, the Inspector of Motor Vehicles, deposed that he examined the offending truck after the accident and prepared report, Exh. 154. This report shows that the truck was insured with respondent No. 4 under cover note No. 60588. He said that he has prepared the report on the basis of the papers, which were found with the vehicle at the time of the inspection. We see no reason to disbelieve the record of the R.T.A. office and the report of the Motor Vehicles Inspector. It is true that there is some confusion about the exact policy number, but it is not possible to discard the evidence solely on that ground. The owner of the vehicle, namely, respondent No. 2 has given the correct policy number in the written statement. The R.T.A. Officer has produced original register and deposed that two numbers of cover note/ policy were issued by the respondent No. 4. The Inspector of Motor Vehicles has deposed that he had inspected the vehicle and its papers after the accident and he found a policy copy issued by the respondent No. 4. In our opinion, this evidence is sufficient to hold that the truck was insured with respondent No. 4 at the time of accident. Turning now to the evidence of respondent No. 4, its officer, Prabhakar Kulkarni, has deposed that a vehicle can be insured in any office of insurer and "it is possible that the truck No, MTL 634 could have been insured by any other branch of our company...". It is also

pertinent to note that the respondent No. 4 has failed to produce the cover note/policy in question to show that it was issued to someone other than respondent No. 2 or for a different vehicle. The respondent No. 4 has not alleged or proved that it never issued a cover note/policy of such number. We have, therefore, no hesitation to accept the appellants' case that the truck was insured with the respondent No. 4 at the time of accident."

Thus it is apparent that there is no absolute proposition of law that mere entry in the R.T.O. record is not a proof of insurance. Whether entry in R.T.O. record can be accepted as proof of insurance depends on the facts of each case,

11. As observed earlier in the present case, the witness examined by appellant insurance company has not deposed that the policy bearing the number mentioned in the R.T.O. certificate or the cover note mentioning the said number has not been issued by the appellant insurance company. All that he stated in the evidence is that the certificate of policy of insurance bearing the said number is not issued either by the Divisional Office at Thane or by the Mumbai Regional Office-IV. It is also not the case of the appellant that no policy has been issued or cover note has been issued bearing such six-digit number. Apart from the judgment of the Division Bench, it is to be noted here that the R.T.O. certificate is issued on the basis of the record maintained by the office of the R.T.O. The record is maintained in discharge of official duty. At the time of payment of vehicle tax, various details as regards the insurance are required to be entered in the records. The evidence in the form of R.T.O. certificate cannot be altogether ignored especially when it is not the case of the appellant that the policy or the cover note bearing the number mentioned in the R.T.O. record is not at all issued by any of the branches of the appellant insurance company. In the circumstances, no fault can be found with the learned Member of the Tribunal if he came to the conclusion that the vehicle in question was validly insured with the appellant insurance company. Strict rules of evidence incorporated in the Indian Evidence Act are not applicable to a Tribunal dealing with the claim arising out of motor accident. In the claim petition, respondent No. 1 averred that vehicle in question was insured with the appellant. The appellant has not disputed that the respondent No. 2 is the owner of the vehicle. It is pertinent to note that the respondent No. 2 did not contest the averment made in the claim petition by filing written statement. The learned Member of the Tribunal was right when he held the appellant liable.

12. Hence, there is no merit in the appeal and the same is dismissed with no order as to costs.

13. At this stage Mr. Vidyarthi prays that the appellant be permitted to withdraw the sum of Rs. 25,000 deposited in compliance with the requirement of section 173 of the Motor Vehicles Act, 1988. The request is accepted and the appellant is permitted to withdraw the said amount.

14. Certified copy expedited.