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**(2019) 10 BOM CK 0123**  
**In the Bombay High Court**  
**Case No : First Appeal No. 02594 Of 2017**

New India Assurance Co. Ltd

APPELLANT

Vs

Sumanbai Sahadu Mali And Ors

RESPONDENT

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**Date of Decision :** 22-10-2019

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 163A  
Evidence Act, 1872 — Section 62

**Citation :** (2019) 10 BOM CK 0123

**Hon'ble Judges :** Vibha Kankanwadi, J

**Bench :** Single Bench

**Advocate :** Dhananjay P. Deshpande, Anand I. Deshmukh, G.V. Wani

**Final Decision :** Allowed

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## Judgement

1. Present appeal has been filed by the original respondent no.02 challenging the judgment and award passed in M.A.C.P. No. 39 of 2008, by the learned Member of the Motor Accident Claims Tribunal, Jalgaon, dated 09-06-2016, whereby claim petition under Section 163A of the Motor Vehicles Act, 1988, came to be allowed against the present appellant.

2. Present respondents no.01 to 04 had filed the said petition for getting compensation in connection with death of one Sahadu Jagannath Mali, who was the husband of claimant no.01 and father of claimants no.02 to 04, who expired in vehicular accident. Sahadu was proceeding with his friend on motorcycle bearing no. MH-19/AG-8827 at about 05.30 p.m. on 22-02-2007 from Bhortake to Bhadgaon. When they were near turn at Bhortake Fata, one Nitin Mohan Ingle, while driving Maruti Van bearing no. MH-19/Y- 1208, in negligent manner, dashed the motorcycle. The said Maruti van was owned by respondent no.01 and it is stated that it was insured with respondent no.02 on the date of the accident. Due to the injuries sustained in the said accident, Sahadu expired in a private dispensary at Chalisgaon. It is stated that Sahadu was 35 years old at that time, who was getting income of Rs.3,300/- per month. [Parties are referred as per

their nomenclature before the Tribunal.]

3. Respondents no.01 and 02 filed their respective written statements separately and denied all the averments in the petition. The manner in which the accident took place, as narrated in the petition, was denied. So also, age, income and occupation of the deceased was denied specifically. The Insurance Company had taken a specific plea that the alleged accident took place at 05.30 p.m. on 22-02-2007, however, respondent no.01 had approached the Insurance Company at about 06.10 p.m. on the same date and accordingly the insurance cover note was issued. Respondent no.01 has altered the timing as 16.10 p.m. by inserting number '1' by prefixing to '6.10' p.m. Therefore, taking into consideration the fact that in fact, policy was obtained at 06.10 p.m. i.e. after the accident had occurred, the Insurance Company is not liable to pay compensation.

4. After the issues were framed, the claimants as well as respondent no.02 has led oral as well as documentary evidence. Respondent no.01 has only produced the insurance policy which was in fact, taken by his predecessor owner. After appreciating the evidence, the learned Member has granted compensation of Rs. 4,59,000/- holding both the respondents liable jointly and severally to pay the said amount of compensation. It has been specifically held that the vehicle was insured when the accident took place. This fact is challenged in this appeal.

5. Heard learned Advocate Mr. D.P. Deshpande appearing for the appellant. Heard learned Advocate Mr. A.I. Deshmukh appearing for respondents no.02 to 4. So also, heard learned Advocate Mr. G.V. Wani appearing for respondent no.05.

6. It has been vehemently submitted on behalf of the appellant that the learned Member failed to appreciate the evidence properly. He has given preference to photo-copy Exhibit 32 to come to the conclusion that the policy was taken at 16.10 p.m., whereas in fact, he ought to have given preference to Exhibit 43 which was the carbon copy of the cover note on which the timing is 06.10 p.m. The learned Tribunal failed to consider that at the time of accident, there was no insurance and therefore, respondent no.02, who had issued the cover note subsequently, cannot be saddled with amount of compensation. The risk covered under the insurance policy would run from the date and timing which has been put on the policy document.

7. Reliance has been placed on the decision in National Insurance Co. Ltd. Vs. Sobina Iakai and others [2007 ACJ 2043] wherein note of catena of judgments of the Supreme Court were taken which laid down the ration that the policy would be effective from the time and date mentioned in the policy. In absence of any specific time and date, the policy becomes operative from the previous midnight. In other words, it was held that the effectiveness of the insurance policy would start from the time and date specifically incorporated in the policy and not from an earlier point of time. Similar ration was laid down in New India Assurance Co. Ltd. Vs. Sita Bai and others [2000 ACJ 40].

8. Per contra, learned Advocates appearing for the respondents supported the

reasons given by the Tribunal and submitted that the Insurance Company had not examined proper person to prove Exhibit 43 and therefore, the document which could have been considered by the tribunal was Exhibit 32. The previous certificate is at Exhibit 37. The total period covered under the policy was from 25-09-2006 to 24-09-2007. Therefore, the policy was in existence and operative on the date of the accident.

9. Taking into consideration the narrow controversy in the appeal, following point arise for determination. Findings and reasons for the same are as follows:-

" Whether the learned Tribunal was justified in holding respondent no.02 liable to pay compensation jointly and severally with respondent no.01 ?"

10. It is to be noted that there is no appeal challenging the finding that the accident had occurred due to the rashness and negligence on the part of driver of Maruti van bearing no. MH-19/Y-1208 and due to the accidental injuries, Sahadu had expired. The claimants being legal heirs of Sahadu, were definitely entitled to get compensation. Here, the question posed by the respondent no.02 is that, the Insurance Company is not liable to pay compensation taking into consideration the fact that at the time of accident, the policy was not effective. Perusal of the record would show that the said Maruti van was earlier registered as private vehicle and the insurance which was taken by one Anil Pimprikar was from 25-09-2006 to 24-09-2007. The said policy has been produced at Exhibit 37. It clearly says that it is the certificate of insurance of private car and this fact has not been disputed by the Insurance Company. But it appears that in the meantime, the said van was purchased by respondent no.01 Sachin Ingle and he converted the use of the said vehicle to Taxi. When he converted the said use, definitely the earlier policy would have come to an end as it was the contract for a particular vehicle i.e. private car taken by the Insurance Company and therefore, it appears that respondent no.01 approached respondent no.02 for the insurance. But then there is dispute as to when exactly the insurance has been taken i.e. cover note was given after due payment of the premium.

11. From the record, it appears that a photo- copy of the cover note was produced by the claimants along with their petition. Along with the written statement Exhibit 14, respondent no.01 has given list of documents at Exhibit 16 and along with the same, photo-copy of the cover note was filed. It was specifically not admitted by respondent no.02. However, it appears that no objection to exhibit the same was given by the claimants and therefore, by giving exhibit to the photo-copy as Exhibit 32, it is stated that it has been proved in evidence of PW 01. In fact, the said procedure that was adopted by the learned Tribunal was wrong. It was the document of respondent no.02 and the respondent no.02 had taken objection to exhibit the said document. Further, it was also to be noted that it was a photo-copy. When respondent no.01 in the normal course would have been the custodian of the original, there was absolutely no reason for him to withhold the original and then produce a photo-copy. The no objection given by the claimants to exhibit the said document had

no meaning at all as claimants could not have taken any objection or taken support and on the basis of that, it could have been stated that the document can be read in evidence. When it has not been brought on record, especially by respondent no.01, who never entered witness box to explain as to why he is not producing the original, the learned Tribunal ought not to have on the basis of no objection given by the claimants exhibited the said document and the said document in fact, cannot be read in evidence at all. As compared to the said photo-copy, what was authentic document was Exhibit 43 which was a carbon copy. Carbon copy is definitely a primary evidence as it is prepared by the same mechanical process. In *Priti Chand Vs. State of Himachal Pradesh* [(1989) 1 SCC 432], it is held that "Since the carbon copy was made by one uniform process, the same was primary evidence within the meaning of Explanation 2 to Section 62 of the Evidence Act." In the said primary document, the time of the policy is 06.10 p.m. and the said document has been held to be proved. So also, since it is coming from the proper custody and as a part of office record, the said document ought to have been believed.

12. The learned Tribunal has discarded the testimony of RW 01 Manish Zadode on technical ground, that he was not working with the Insurance Company on the date, cover note Exhibit 43 was issued. In fact, when specific defence was taken by the Insurance Company about the fake policy document or manipulated cover note produced on record, then it was incumbent upon respondent no.01 to enter the witness box, produce original and state on oath, when exactly the premium was paid. In absence of the same, it is concluded that the cover note Exhibit 43 became effective from 6.10 p.m. of 22-02-2007. The accident had taken place at 05.30 p.m. on the same date i.e. prior to the cover note. Under such circumstance, the policy was not effective at the time of accident. In view of the aforesaid decisions relied by the learned Advocate appearing for the appellant, respondent no.02 cannot be held liable to pay compensation together with respondent no.01. The finding given by the learned Tribunal on that count is erroneous and therefore, deserves to be set aside by allowing the appeal.

13. Hence, the following order:-

(a) The appeal is hereby allowed.

(b) The judgment and award passed in M.A.C.P. No. 39 of 2008, by the learned Member of the Motor Accident Claims Tribunal, Jalgaon, dated 09-06-2016, is hereby set aside to the extent of holding respondent no.02 liable to pay compensation jointly and severally with respondent no.01. The said claim petition stands dismissed as against respondent no.02. It is clarified that rest of the judgment and award remains undisturbed.

(c) The amount as per the award was deposited by the appellant in this Court and it is stated that it has been withdrawn by the claimant to the extent of 50 % by filing undertaking. Under such circumstance, claimants to refund the said amount to the Insurance Company within a period of two months. If it is not

refunded, then the Insurance Company may take appropriate steps to recover the same. Rest of the amount pending with this Court be refunded to the Insurance Company.

(d) There shall be no order as to costs.