

(1989) 07 DEL CK 0046

In the Delhi High Court

Oriental Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Prem Prakash

RESPONDENT

Date of Decision : 24-07-1989

Acts Referred:

Citation : (1989) 2 ACC 355 : (1990) ACJ 278

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Judgement

Malik Sharief-Ud-Din, J.—The appellant has made a grievance against an award dated 18th of February 1980 passed by the Motor Accident claims Tribunal, Delhi, holding the appellant jointly and severally responsible along with respondents No. 2 and 3, that is, Bhagwan Dass and Gian Chand for payment of compensation. The claim arose as a result of an accident by a three-wheeler scooter No. DLR 5200 on 6th of May 1973 at 3.30 P.M. in which one Prem Prakash sustained injuries. On the relevant date and time it was being driven by respondent No. 1 and respondent No. 2 was the owner thereof. In the claim petition, respondent No. 3 appellant herein was also made a party as it was asserted that the scooter was at the relevant time insured for third party claim with the Indian Mercantile Insurance Company which since stands merged with the Oriental Fire and General Insurance Company Ltd.

2. The grievance of the appellant is that there is no evidence indicating that the offending vehicle was insured with it on the date of the accident and that the Tribunal's conclusions in this regard are based on no valid evidence. It seems that the stand of the appellant before the Tribunal was that the offending vehicle was not insured with it on the date of the accident and that it was subsequently insured with the appellant company covering the period 13th of September 1973 to 12th of September 1974. It may be stated that neither the owner of the scooter nor the driver has appeared before the Tribunal. It seems that after the claim was preferred before the Tribunal and the notice of the same was given to the appellant company, the Divisional Manager of the Company sent a letter to

the owner of the vehicle on 20th of November 1973 in which it was categorically communicated to him that the offending vehicle was not insured with the appellant company on the date of incident, and that the company was not liable to make any payment. Since the owner did not contest the proceedings before the Tribunal, he could not take any stand nor has he been examined as a witness by the claimant to show that the offending vehicle was insured with the appellant company on the date of incident. In the absence of any such evidence the Tribunal has placed reliance on a certificate marked Ex. PW 4/1 purported to have been issued from the office of the Regional Transport Authority by some one which letter, according to the observations of the Tribunal, was proved by Shri R.P. Khanna, a clerk indicating that on the date of the incident the offending vehicle was insured with the appellant company. I have gone through the evidence of Shri R.P. Khanna, clerk from the office of the Regional Transport Authority, and I am in complete agreement with Mr. Chaudhry that the evidence tendered by him is absolutely of no worth. I may here reproduce the testimony tendered by him, which is as under:

I have brought with me the summoned record. The vehicle No. DLR 5200 stands registered in the name of Prem Kumar son of Shri Kundan Lal, r/o M-22 WZ 50 Ghantaghar, Hari Nagar, New Delhi w.e.f. 8-8-78. The certificate Ex. PW 4/1 is issued by our office on 25-1-74 as per office copy kept in the file brought by me. According to the entries in the original record the vehicle in question is entered to be insured with Indian Mercantile Insurance Company. Certificate No. 11350 was valid up to 24-7-1973. The vehicle in question previously stood in the name of Shri Gian Chand s/o Shri Siri Ram resident of 19, Netaji Nagar w.e.f. 1-5-68 up to 8-8-78.

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The name of the insurance company has been obtained from which record I cannot say. I cannot identify the signatures and writing on certificate Ex. PW 4/1. The certificate No. 11356 and the name of insurance company given as above is not in the registration file, which I have brought today. I cannot say from where this number might have been obtained, as this number is not mentioned in the registration file brought by me. We do not verify the insurance policy or certificate before issuing the token. Again said, we issue the token when all documents are completed, that is, previous taxes, and insurance papers etc.

3. The aforesaid statement clearly indicates that this certificate Ex. PW 4/1 is a worthless piece of evidence. It is clearly stated by the witness that it is not based on any records lying with the R.T.O. nor has it been issued by any one from R.T.O.'s office. I say so, as the witness has not stated as to who had issued the certificate and where from the name of the insurance company has been procured. There is nothing in the registration file maintained by the R.T.O. of this vehicle to indicate that the offending vehicle was insured with the appellant company on the date of the incident. Normally, the insurance policy in original is the best evidence and if the primary evidence is not available the fact has to be

communicated to the court and permission for leading secondary evidence is to be sought. Nothing of that sort has happened in the present case. Had the claimant summoned the insurance policy from the owner and had the owner failed to produce the same there was justification for leading secondary evidence. In the present case, that apart, the secondary evidence led is of no evidentiary value and it does not in any way prove that at the time of the incident the offending vehicle was insured with the appellant company. There was, Therefore, no earthly reason for the Tribunal to disregard the testimony of Shri S.K. Kapur, Divisional Manager of the appellant company, who has categorically stated that the offending vehicle was not insured with the company on the date of the incident.

4. I may before parting with this order quote certain observations of the Tribunal, which are based on surmises. The Tribunal has observed as under:

No doubt the witness proving Ex. PW 4/1 could not give the source from which the name of the insurance company was obtained, but at the same time it may be mentioned here that all the particulars noted by the registration authority regarding a particular vehicle are copied out from the documents shown to the registering authority by the vehicle owner and as such there is a presumption of correctness of the particulars kept in the record of the registering authority during the course of their official business....

It was on the basis of this observation that the letter is based on the records maintained in the normal course of official business that the learned Tribunal has drawn a presumption against the insurance company and this he is doing on the basis of surmises and assumption that particulars regarding insurance are being maintained by the registering authority. There is no evidence to that effect on record and the only person who could have said so is PW 4 Shri R.P. Khanna but he has not said a word about the same. In conclusion, I find that the Tribunal has come to the conclusion of the offending vehicle being insured with the appellant company on the date of incident without there being any basis for the same. In my view, there is no evidence justifying such a conclusion. The result is that the appeal is allowed and it is held that the appellant company is not liable for the payment of compensation awarded to the claimant. The compensation shall be recoverable from the owner and the driver of the offending vehicle. The appeal stands disposed of.