

(1992) 05 J&K CK 0002
In the Jammu And Kashmir High Court

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Indira Rani and Others		RESPONDENT

Date of Decision : 01-05-1992

Acts Referred:

Citation : (1994) 1 ACC 651

Hon'ble Judges : B.A. Khan, J

Bench : Single Bench

Judgement

B.A. Khan, J.—This appeal raised an interesting question whether a copy of insurance policy, filed by the Insurance Company along with its

written statement, could be excluded from consideration on the ground that company had failed to make out a case for production of secondary

evidence? On the answer to this question will depend the extent of liability of the company. If it can be held that copy is to be taken into

consideration, appellant's liability would be only Rs. 15,000/-, otherwise it would be unlimited.

2. The appeal arises out of a claim petition filed by the claimants of one Ved Paul Sharma who was killed on 1.11.1985, while travelling in a bus as

a passenger. M.A.C.T., Udhampur, awarded compensation of Rs. 95,000/- to the claimants and burdened the company with entire liability,

despite the fact that company had limited liability in its written statement and had also filed a copy of Insurance Policy along with. At no stage had

any objection been raised with regard to the genuineness or admissibility of the copy by any contesting party. Consequently, no issue was struck

regarding the extent of company's liability. Tribunal allowed the matter to proceed and eventually excluded the copy from consideration. While

doing so, it held as under:

The Insurance Company in this case produced only a copy of the Insurance Policy without making a case for the production of secondary

evidence and the copy without its contents having been admitted by the other party and without its having been proved in accordance with law,

such document vis-a-vis evidence has to be excluded from consideration notwithstanding its admissibility remained unquestioned by the petitioner.

3. The sole question that arises for determination is whether or not the company was obliged to make out a case for the production of secondary

evidence and to prove the contents of the copy and whether the Tribunal was justified in excluding the same from consideration on this ground.

4. Mr. Choudhary, learned Counsel for the appellant, has submitted that since the genuineness of the copy was not under question, there was no

necessity for the company to make out a case for production of secondary evidence and to prove the contents of the copy. The company, he

argued, had discharged its obligation by placing copy of the policy on record and in case the insured wanted to show that the company's liability

was unlimited, it was for him to establish it by bringing the original policy on record.

5. During the hearing, this Court directed the learned Counsel (sic) respondent owner, Mr. Chopra, to produce the original Insurance Policy for

perusal of the court, but he failed to comply with the direction. Upon this, the Counsel for the appellant was asked to produce duplicate copy of

the policy, which was placed on record. This was done to assume satisfaction about the genuineness of the copy filed by the appellant during trial.

6. At the very outset it needs to be pointed out that proceedings before the Tribunal under the Motor Vehicles Act are summary in nature. Given

regard to this proposition, it would be a tall order to insist that rules of evidence are required to be followed to the hilt in these proceedings. These

rules undoubtedly postulate that documents must be proved by primary evidence and that a copy of original policy is in the nature of secondary

evidence. But this does not and should not hold good in summary proceedings in a case where admissibility or genuineness of a document is not

doubted or questioned by the opposite party. In such proceedings where the document goes unchallenged and unquestioned and no need of

suspicion is directed towards it, it should not be brushed aside on the specious plea of falling short of technical requirement of rules of evidence.

After all, the mode of proof of a document is a question of procedure and when no objection is raised by the contesting parties as to its existence,

genuineness or admissibility, it must be deemed to have been admitted by the other party irrespective of whether or not it is admitted in the manner

as provided in Order 12 of Civil Procedure Code. If that be so, and if the document and its contents tally with the supporting contemporaneous

record and the Trial Court feels satisfied about its genuineness no formal proof is required in accordance with rules of evidence. In that event, it will

have to be relied upon to facilitate just adjudication of the matter. Any other approach would run counter to the established norms of justice and

give handle to interested parties with ulterior motives to cling to technicalities of procedure to derive benefit by seeking shelter under abstract

doctrine of burden of proof and rigid adherence to the rules of evidence.

7. Cases are conceivable in accident claims where a party is in possession of the original document and offers its copy in evidence. In such a case,

it is understandable to ask the party concerned to make out a case for production of secondary evidence and to prove the contents of the copy

strictly in accordance with the rules of evidence. But this cannot be applied with equal force in a case where the party is only in possession of the

copy and wants to discharge its obligation by placing it on record. In the latter case, where no dispute is raised about the genuineness or

admissibility of the copy, it would be unjust to brush it aside merely on a technical requirement.

8. In the present case, it goes without saying that appellant company had pleaded its limited liability and had discharged its obligation by placing a

copy of Insurance Policy on record. No objection was raised casting any cloud on the genuineness, existence or admissibility of the copy.

Therefore, it was not for company to make out a case for production of secondary evidence and to prove the contents of copy. Nor could the

copy be excluded from consideration on that count.

9. Viewed thus, I feel no difficulty in holding that appellant company's liability as per the terms of the policy was limited to Rs. 15,000/- and that

the Tribunal had fallen in error in excluding the copy from consideration in the

facts and circumstances of the case. I am fortified in my view by a decision of the Supreme Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, . In this case, the Court relied upon the copy of the policy placed on record since no objection had been raised regarding its admissibility or genuineness. While doing so, the Court held that it is the duty of the party, which is in possession of a document, to produce the document and that such party should not be permitted to seek shelter behind the abstract doctrine of burden of proof. In M/s. Azad Nakodar Bus Servie (P) Ltd. and another Vs. Harbans Singh and others, Punjab and Haryana High Court went a step further to place the onus on the owner insured (who invariably is in possession of the original policy) to come forward and establish that insurer's liability was unlimited.

10. As the practice goes, the original policy is invariably in possession of the insured owner. Therefore, it falls on him to bring the original on record to facilitate the determination of the liability. But it has been noticed with dismay that unscrupulous insured withhold the original and resort to technicalities with a design to pass on their burden to the insurer. Such a practice deserves to be curbed and discouraged even if it involves a minor departure from right adherence to rules of procedure.

11. In the result, I allow this appeal and set aside the order impugned. Having determined the liability of the Insurance Company at Rs. 15,000/- the balance amount of Rs. 80,000/- shall be payable by owner insured (respondent No. 1) who shall pay this amount to the claimants within a period of four months from today along with interest as awarded by the Tribunal. Record be returned.