
(2010) 04 BOM CK 0147
In the Bombay High Court
Case No : First Appeal No. 204 of 2000

Oriental Insurance Company	Vs	APPELLANT
Rambhau Vithoba Chaware and Others		RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Citation : (2010) 3 ALLMR 596 : (2010) 3 BomCR 534 : (2010) 112 BOMLR 2491

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : D.N. Kukdey, for the Appellant; V.P. Panpalia, for Respondents Nos. 1 to 4 and L.H. Kothari, for the Respondent

Judgement

C.L. Pangarkar, J.—This first appeal is preferred by original N.A. No. 2 - the Insurance Company.

2. The facts giving rise to the appeal are as follows

Respondent No. 5 is the owner of Tractor No. MHR 4936 and Trolly No. MH 30/9660. It is alleged that the said Tractor was being used on the site of a dam under construction. The son of the claimants by name Eknath was working on the said Tractor. It is alleged that the said Tractor on its way turned turtle and a boy came under the said truck and died. Claimants No. 1 to 4, therefore, claimed compensation of Rs. 1,32,000/-. According to the claimants, the said vehicle was insured with appellant/N.A. No. 2.

3. The application was opposed by respondent No. 5. He admitted his ownership of Tractor No. MHR 4936 and Trolly No. MH 30/9660. He, however, denied that the accident had taken place due to the negligent driving. He also contended that the said Tractor and Trolly were insured with the appellant/Insurance Company and therefore, the compensation should be recovered from the appellant.

4. The Insurance Company - the present appellant filed written statement and contended that the Tractor was never insured with it nor trolly was insured with it

and therefore, no liability can be fastened on it.

5. The Tribunal found that the accident had taken place due to negligence and it also found that the Tractor was insured with the appellant and therefore, directed the owner and the Insurance Company to pay the compensation of Rs. 1,32,000/. Hence, this appeal.

6. I have heard the learned Counsel for the appellant and the respondents.

7. The main dispute is whether it could be said that the vehicles involved in the accident were insured with the appellant/Insurance Company. This is because, the investigation papers and the chargesheet show the different numbers than shown in the policy. The learned judge of the Tribunal relying on certain decisions finds that it could be a sort of a typographical mistake that the vehicles numbers were wrongly mentioned in the policy and therefore, proceeded to fasten the liability on the Insurance Company also.

8. The investigation papers and the FIR show that the tractor No. MHR 4936 and Trolley No. MH 30/9660 were involved in the accident. FIR, chargesheet and the spot panchanama are Exh.34, 35 and 36. In the claim petition also it is alleged that these two vehicles were involved in the accident. Respondent No. 1 - the owner does not dispute that these two vehicles were involved in the accident. There could, therefore, be no manner of doubt that the vehicles involved in the accident were these two alone and none else. Since the alleged tort was committed during the use of these two vehicles, the liability has to be fastened on the owner of these two vehicles and if the owner can show that these two vehicles were insured with the Insurance Company, the liability could be fastened on the Insurance Company. If the written statement to the claim petition of the owner is seen, the owner does not dispute ownership of these two vehicles involved in the accident. Respondent No. 5 - the owner can in no case escape the liability because he is admittedly the owner of the vehicle. The question involved is whether these two vehicles could be said to be insured with the appellant. In the instant case, respondent No. 5 - the owner entered into the witness box and admitted the ownership of these two vehicles. The owner/respondent No. 5, however, claims in the evidence that these two vehicles were insured with the appellant and the registration numbers of vehicles are wrongly mentioned in the policy. The Insurance Policy No. 95/00730 was produced by the Insurance Company upon a notice given by respondent No. 5. The policy (Exh.73) bears the name of respondent No. 5 as Mr. R.S.Karwa but the vehicle numbers are MHR 4943 and MHV 9092. This policy is, therefore, in respect of some different vehicles. Respondent No. 5 says that he is not the owner of these two vehicles though the policy stands in his name. The policy seems to be issued for the period from 14/9/1994 to 13/9/1995 on proposal dated 19/9/1994. Respondent No. 5/owner relies on this policy. The registration number of the vehicles mentioned in the policy are totally different though the name of respondent No. 5 appears as owner. There are three things why the statement of respondent No. 5 that the policy is in respect of vehicles involved in the accident and the

numbers are wrongly typed, cannot be accepted. First; there is no pleading that he possesses the policy in respect of the two vehicles and that through inadvertence wrong numbers are typed on it. Secondly; if the numbers were wrong, it was the duty of respondent No. 5 to get them corrected. He did not bring this to the notice of the Insurance Company at all. Respondent No. 5 claims to have sent a proposal for insuring the vehicle i.e. the trolley No. MH 30/9660 for a period 20/6/1995 to 21/6/1996 vide Exh. 69/the proposal form. To my mind, there was no reason for respondent No. 5 to have sent a proposal to the Insurance Company for insuring Trolley No. MH 30/9660 when according to him, the policy (Exh.73) pertains to this trolley itself. The accident is dated 25/6/1995. Obviously, to overcome the difficulty, the ante dated form of proposal was sent. The stamp on the form (Exh.69) shows that it was received in the office of the Insurance Company on 28/7/1995. The fact that such a proposal was sent clearly goes to show that the vehicle was actually not insured with the appellant. The act of sending the proposal for insuring the vehicle in accident also speaks volume against respondent No. 5. The inference that can be drawn is that respondent No. 5 was aware that the policy Exh.73 does not pertain to the vehicle involved in the accident.

9. Shri Panpalia, the learned Counsel for respondent Nos. 1 to 4, contends that the policy is in the name of respondent No. 5 and the only mistake is of registration number of the vehicles. He submits that respondent No. 5 does not own any other vehicle except those involved in the accident and that leads to an inference that policy (Exh. 73) pertains to accident vehicle only. Such an inference would be farfetched. The learned Counsel for the appellant has placed before me the proposal form in respect of policy (Exh.73) in the name of respondent No. 5. The proposal form is signed by respondent No. 5 and the registration numbers on the policy (Exh.73) and the proposal form tally exactly. It is, therefore, clear that policy (Exh.73) pertains to two different vehicles owned by respondent No. 5 and there is no typing or clerical mistake at all. Respondent No. 5, it seems, had transferred these vehicles and has tried to raise a false defence altogether. The evidence goes to show that the vehicles involved in the accident were never insured with the appellant on the date of the accident. The appeal, therefore, must be allowed. It would also be just to impose compensatory costs on respondent No. 5 for having raised patently false defence. In the circumstances, following order is passed.

The appeal is allowed partly.

The finding of the Tribunal that the appellant is liable to reimburse respondent No. 5 is set aside. On the other hand, it is directed that respondent No. 5 shall pay to the claimants the amount awarded by the Tribunal along with the interest as directed by the Tribunal. If the Insurance Company has already paid the compensation awarded to the claimants, then the Insurance Company may recover the same from respondent No. 5 the owner herein on the basis of this order. Respondent No. 5 shall pay costs of this appeal to the appellants.

Respondent No. 5 shall also pay costs to the original claimants of the claim petition. In addition, respondent No. 5 shall pay compensatory costs of Rs. 3000/ to the Insurance Company. Decree be drawn up accordingly.