**(2009) 10 RAJ CK 0096**

**In the Rajasthan High Court**

**Case No :** Civil Miscellaneous Appeal No. 256 of 1997

Oriental Insurance Company APPELLANT

Vs

Smt. Chammo Kanwar and Others RESPONDENT

**Date of Decision :** 21-10-2009

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 20, 22, 30

**Citation :** (2009) 10 RAJ CK 0096

**Hon'ble Judges :** Gopal Krishan Vyas, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

Gopal Krishan Vyas, J.—Instant appeal has been filed by the appellant Oriental Insurance Company Ltd. u/s 30 of the Workmen Compensation Act against award dated 10.12.1996 passed by the Commissioner, Workmen Compensation, Bhilwara in Case No. 11/1990, whereby, award of compensation in the sum of Rs. 1,17,919/- has been ordered to paid by the appellant insurance company to the respondent-claimants.

2. As per brief facts of the case, due to an accident occurred in between the night of 24th and 25th of September, 1989, driver Bheru Singh died when he was driving jeep No. GUZ 8771 on the way from Bhilwara to Chittorgarh. After death of Bheru Singh in the said accident, an application u/s 22 of the Workmen Compensation Act, read with Section 20 was filed by the dependents of the workman late Bheru Singh and, in all, Rs. 85,428/- were claimed as compensation along with interest at the rate of 18 per cent and further penalty of 50% of the claimed compensation was also prayed for.

3. In the claim petition, it is specifically stated that at the time of death, late Bheru Singh was 27 years old and he was getting salary of Rs. 1,200/- per month and was employed with respondent Kanchan Devi and the vechile in question was insured with Oriental Insurance Company Ltd., Bhilwara.

 

4. Against the claim so filed, a reply was filed by private respondent employer Kanchan Devi as well as by the insurance company. The main plea was taken by the insurance company that although a cover note after insuring the vehicle in question was issued on 11.04.1989, but, on the same day, the said cover not was cancelled upon the request made by the representative of owner of the vehicle late Shivlal Ahir; meaning thereby, it is contended by the insurance company that cover-note for insurance of the vehicle in question was issued but the same was cancelled and not issued by the insurance company; hence, it cannot be presumed that the vehicle in question was insured with the appellant insurance company.

5. After filing of the written-statement, as many as five issues were framed, out of which, issue No. 3 is related to non-issuance of the cover-note and with regard to the fact that vehicle in question was not insured with the Oriental Insurance Company Ltd., Bhilwara on the relevant date of accident. Before the Commissioner, Workmen Compensation, evidence from both the sides was produced both oral and documentary evidence. From the claimants'' side, statement of claimant Chhamukanwar was recorded and from the side of the respondents, statement of Dinesh Kumar, Usman Bhai and Uday Lal were recorded by the Commissioner, Workmen Compensation, Bhilwara. So also, certain documents were exhibited. Thereafter, learned Commissioner, Workmen Compensation proceeded to decide the matter and, ultimately, passed award for compensation of Rs. 1,17,919/-. Against the said award, this appeal has been filed by the insurance company.

6. In this appeal, the appellant insurance company is mainly challenging the finding of the Commissioner, Workmen Compensation on issue No. 3 and it is submitted that the appellant has led clear and categorical evidence to the effect that immediately, on the same day, after issuance of the cover-note No. 31843, it was cancelled and amount was refunded for the reason that vehicle has already been got insured with some other insurance company, therefore, the present cover-note was cancelled. Further, it is argued that the mode of cancellation was that the amount of premium was refunded and original cover-note was surrendered to the company. Therefore, in view of the fact that there is cogent evidence on record to show that the vehicle in question was not insured with the Oriental Insurance Company on the date of accident and, therefore, the company is not liable to pay any compensation.

7. Learned Counsel for the appellant argued that all the four copies of the cover note were prepared and proof of cancellation is that all the four copies of the cover-note are with the company and they have been produced before the Commissioner, Workmen Compensation. In such circumstances, the Commissioner committed error in holding that the vehicle was insured with the company and, further, while holding that liability of the insurance company continued.

8. As per learned Counsel for the appellant, the finding of the Commissioner,

 

Workmen Compensation is erroneous and wholly based upon irrelevant basis like not obtaining receipt by the appellant from the owner with regard to refund of premium, representative of the owner of the vehicle or person getting the cover-note cancelled having not been shown to be holding any power of attorney from the owner and so on. In fact, learned Commissioner has committed error while passing the award ignoring cogent evidence adduced by the appellant company. The cancelled document was produced on record. In this view of the matter, finding of the learned Commissioner is totally baseless and unfounded by which he has held the Company liable for compensation because he has completely ignored the material evidence on record with regard to cancellation of the cover-note on the same day.

9. As per learned Counsel for the appellant, there was no question of any formal communication being addressed by the appellant about revocation of the insurance and such communication being received by the owner. Revocation inherently pre-supposes existence of a concluded contract or a subsisting offer capable of being accepted, therefore, in the present case, in view of the cancellation of the cover-note no concluded contract came into existence. In the absence of cover-note, if any offer was to be spelt out, whether to be of the insurer or the owner, it automatically stood, revoked face to face and, therefore did not survive capable of being revoked by any subsequent written communication, therefore, the whole finding is clearly based on irrelevant considerations.

10. As per learned Counsel for the appellant, there was no question of appellant making any payment of compensation because undisputedly the liability to pay compensation is of the owner/employer, therefore, within the prescribed period the owner could and should have made payment of the compensation and, therefore, he could very well claim indemnity from the insured if the vehicle were at all insured. Therefore, the award is totally in violation of the principles of natural justice because as per the appellant insurance company the vehicle was not insured with the company for which any liability can be imposed for payment of compensation by the appellant insurance company. In this view of the matter, this appeal may be allowed and judgment under challenge may be quashed and set aside.

11. Per contra, learned Counsel for the respondent vehemently argued that finding arrived at by the Commissioner is based upon sound reasons and after consideration of material evidence on record. Learned Commissioner has rightly arrived at the finding that the insurer has failed to prove before the Commissioner that premium which is received at the time of issuing the cover-note was refunded to the vehicle owner. As per contention of the appellant itself the representative of the vehicle owner made request for cancellation of insurance; meaning thereby, the vehicle owner was not present at the time of cancelling the cover-note. Further, it is argued that there is no communication addressed with regard to cancellation of the cover-note and in the absence of

 

such document, statement made by witness Uday Lal that the vehicle was insured with the Oriental Insurance Company was rightly relied upon by the learned Commissioner. The original insurance copy was not given to the vehicle owner and photo stat copy of insurance was given and on that basis the vehicle was got released by he orders of the Court. Therefore, the learned Commissioner rightly accepted the statement of witness Uday Lal, munim of employer Kanchan Devi and arrived at the finding that the vehicle in question was insured with the Oriental Insurance Company and the said insurance company is liable to pay compensation. In this view of the matter, the finding arrived at by the learned Commissioner, Workmen Compensation, Bhilwara does not require to be interfered with because the finding is based upon sound reasons and adjudication has rightly been made by the Commissioner.

12. I have considered the rival submissions and perused the entire record of the case.

13. First of all, it is very important to observe that Oriental Insurance Company is not disputing that initially a cover-note was issued and premium was paid by the vehicle owner. The plea which is taken by the Insurance Company before the Commissioner is that the said cover-note was cancelled on the basis of the prayer made by the representative of the vehicle owner that vehicle was got insured with another insurer company. If such contention is accepted, then, it was the duty of the appellant insurance company to ascertain whether it was insured with some other company and insurance company was under obligation to expressly name the person who allegedly made request for cancellation of the cover-note. For the same, it is necessary to obtain a specific application from the person who deposits the amount of premium for issuing the insurance cover-note. Hever, in this case, after issuance of the cover-note, no communication was issued to the owner of the vehicle about cancellation of the cover-note. The learned Commissioner, Workmen Compensation has applied its mind in proper manner and arrived at the finding that in the absence of any document it cannot be accepted that a prayer was made by the representative of the vehicle owner for cancelling the cover-note.

14. Further, if the contention of the appellant insurance company is accepted that the vehicle was insured wtih another company, then, obviously the vehicle owner was to inform the Court that his vehicle is insured with another insurance company and not with the appellant insurance company; but, in this case, the employer has adduced evidence of P.W.-3 Uday Lal, in which, he has specifically deposed that the vehicle was insured with the Oriental Insurance Company and photo stat copy of the cover-note was produced on record. It is very strange that how the photo stat copy of the original cover-note happened to be in possession of the owner of the vehicle. If the plea of the appellant insurance company is accepted that on the same day the original cover-note was cancelled, then, how the photo stat copy of the original cover-note remained in possession of the vehicle owner which is produced along with the claim before the Commissioner

 

by the employer Smt. Kanchan Devi. This fact itself is sufficient to prove that the vehicle was insured with the Oriental Insurance Company and there is no material on record to accept the contention of the Oriental Insurance Company that upon request made by the representative of the vehicle owner the cover-note was cancelled. If it is so, then, reason for cancellation of cover-note is required to be recorded; but, upon the original cover-note, it does nto bear any reason for cancellation of the cover-note.

15. Similarly, there is no evidence to show that vehicle owner was informed by the appellant company that cover-note has been cancelled upon request made on her behalf by her representative. In fact, identity of the represenative is also not disclosed, only a bald assertion is made that upon request made on behalf of the vehicle owner cover-note was cancelled which is rightly not accepted by the Commissioner, Workmen Compensation. The whole plea of the appellant insurance company is that although premium was accepted but, subsequently, it was cancelled on the request made by the representative of the vehicle owner. But, to prove this plea only cover-note bearing word "cancellation" is produced on record; but, no document with regard to information to the vehicle owner is produced nor any receipt of the vehicle owner receiving payment of premium back is produced before the Commissioner. Likewise, name of the representative to whom the premium was refunded is not disclosed. Further, no reason is recorded for cancellation of the cover-note and, on the other hand, photo-stat coy of this cover-note of insurance of the vehicle is produced before the Commissioner by the employer and to support the document statement of witness Uday Lal, munim of the employer was recorded by the Commissioner, in which, it is deposed that after giving the photo-stat copy, later on, policy will be issued; but, vehicle owner did not receive the original insurance policy. The vehicle was also got released from the Court on the basis of the cover-note photo stat copy after the accident. In this view of the matter, all the above facts loudly speak that adjudication made by the Commissioner is based upon sound reasons and material available on record.

16. Likewise, it is abundantly clear from the record of the case that plea taken by the appellant insurance company is not supported by any cogent evidence except the original cover-note upon which no reasons are recorded for cancellation of the cover-note and at the same time, to defeat the contention of the insurance company, there is material on record which is photo-stat copy which does not bear any cancellation and, that, too, is produced by the employer before the Commissioner. Therefore, it is abundantly clear that on the basis of evidence on record the learned Commissioner rightly arrived at the finding that the vehicle was insured with the appellant insurance company, therefore, if anything transpired in the office of the insurance company for the same the vehicle owner or the legal representative of the deceased cannot be deprived to claim compensation from the appellant insurance company. If anything is done in the office of the insurance company for cancellation of the cover-note, that too lies with them till it is produced before the Commissioner, Workmen Compensation,

then, such plea which is taken by the insurance company cannot be accepted and has rightly been rejected by the learned Commissioner, Workmen Compensation, Bhilwara and no error has been committed by the Commissioner while passing the impugned award.

17. In this view of the matter, there is no ground to reverse any finding given by the Commissioner, Workmen Compensation, Bhilwara while passing the award impugned.

18. Hence, this appeal has no force and the same is hereby dismissed.