
(2008) 09 BOM CK 0096
In the Bombay High Court
Case No : F.A. No. 32 of 1996

United India Insurance Co. Ltd.

APPELLANT

Vs

Zaverben Harilal and Others

RESPONDENT

Date of Decision : 29-09-2008

Acts Referred:

Evidence Act, 1872 — Section 114

Citation : (2009) ACJ 1399

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : S.R. Singh, for the Appellant; O.S. Kutty, G.N. Salunkhe and A.A. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

D.G. Karnik, J.—This appeal is directed against the judgment and order dated 31.12.1994 passed by the Member, Motor Accidents Claims Tribunal, Kolhapur (for short "the Tribunal").

2. The appellant United India Insurance Co. Ltd. is the insurance company with whom the motor vehicle in question, a truck bearing registration No. MHL 7121 (hereinafter referred to as "the truck") is alleged to be insured.

3. The respondent Nos. 1 to 3 are the widow and children of Harilal Kedia who died in a vehicular accident involving the truck. The respondent No. 4 is the owner of the truck and the respondent No. 5 was driving the truck at the relevant time. The respondent No. 6 Oriental Fire & Genl. Ins. Co. Ltd. is another insurance company, but it is not insurer of the truck and consequently is not concerned in the appeal.

4. On 4.4.1984, Harilal died in a vehicular accident involving the truck. The respondent Nos. 1 to 3 made a claim for compensation against the appellant and the respondent Nos. 4 to 6 before the Tribunal by filing Claim Petition No. 48 of 1985. Compensation was claimed from the respondent Nos. 4 and 5 as the

owner and driver of the truck respectively and also from the appellant and the respondent No. 6 as insurers.

5. The Tribunal held that Harilal died on account of rash and negligent driving of the truck by the respondent No. 5 and, therefore, the respondent Nos. 4 and 5 were held liable to pay compensation. The Tribunal rejected the defence of the appellant that at the relevant time the truck was not insured with the appellant and, therefore, held the appellant liable to pay the compensation to the respondent Nos. 1 to 3. Respondent No. 6 was held not liable as it was not the insurer at the relevant time.

6. After hearing learned Counsel for the parties, the point that arises for my consideration is as follows:

Whether the respondents had proved that truck was insured with the appellant at the relevant time and consequently the appellant was liable to pay the compensation to the respondent Nos. 1 to 3?

7. Learned Counsel for the appellant submitted that the Tribunal erred in holding that the appellant was the insurer of the truck at the relevant time. He invited my attention to the policy of insurance, Exh. 134, issued by the appellant. The policy was taken out by the respondent No. 4 on 28.8.1982 and was valid from 29.8.1982 to 28.8.1983. The accident occurred on 4.4.1984 and was beyond the period covered by the policy. Hence the appellant was not liable as an insurer.

8. Tribunal has fastened the liability on the appellant on the basis of the certificate issued by the regional transport office (for short "the R.T.O.") dated 26.4.1984, Exh. 138. The certificate undoubtedly states that the truck was insured with United India Insurance Co. Ltd. the appellant herein for the period from 29.8.1983 to 28.8.1984. If the facts stated in the certificate are accepted as proved, then the appellant would be liable to pay the compensation as the accident would then be held to have occurred during the validity of the insurance policy.

9. The respondent Nos. 1 to 3 examined Vasant Baburao Kamble, a clerk in the office of the R.T.O., Kolhapur, to prove the certificate at Exh. 138 and its contents. In his deposition, Kamble has stated that the certificate was issued on the basis of entries in the R.T.O. records which were made on the basis of "AT Form" submitted by the owner. In the "AT Form", the respondent No. 4 had stated that the truck was insured with the appellant for the period from 29.8.1983 to 28.8.1984 and on that basis entries were made in the R.T.O. records and the certificate was issued. In his cross-examination, Kamble admitted that the R.T.O. never confirms from the insurance company whether the vehicle is insured with it as the R.T.O. is not concerned with the insurance but is only concerned with the vehicle tax. He further admitted that the entries recording particulars of insurance are made only on the basis of "AT Form" submitted by the owner without verifying the contents thereof independently. The statement made by the owner of the truck, respondent No. 4, in the "AT

Form" submitted by him to the R.T.O. would, at best, be an admission by him and can be used against him. Any admission by the respondent No. 4 contained in the "AT Form" or for that matter anywhere else to the effect that the truck was insured with the appellant would certainly not be an admission on the part of the appellant nor would it bind the appellant. The appellant had examined Arvind Kuber, Administrative Officer, who categorically stated on oath that the truck was insured with the appellant only for the period 29.8.1982 to 28.8.1983 and thereafter the insurance was never renewed. In the light of the positive statement on oath by the appellant, the Tribunal erred in holding merely on the basis of the R.T.O. certificate which was issued only on the basis of statement in the "AT Form" submitted by respondent No. 4 that the truck was insured with the appellant.

10. There is one more reason why I am inclined to hold that the truck was not insured with the appellant. Perusal of the insurance policy at Exh. 134 shows that it was policy covering the period from 29.8.1982 to 28.8.1983. No policy of insurance covering the period from 29.8.1983 to 4.4.1984 was produced on record. However, immediately on the day following the day of accident, the respondent took out an insurance policy, Exh. 135, from New India Assurance Co. Ltd. covering the period 5.4.1984 to 4.4.1985. If any policy of insurance as noted in the certificate of the R.T.O. was really issued by the appellant covering the period 29.8.1983 to 28.8.1984, there was no need for the respondent No. 4 to take out another insurance policy covering part of the same period from 5.4.1984 till 28.8.1985. Perhaps, immediately on the happening of the accident, the respondent No. 4 became aware that the previous policy of insurance had expired and so he took out a fresh policy of insurance on 5.4.1984. This may have been done as an attempt to cover the liability which had fallen on him on account of the accident occurred on 4.4.1984 or as a precaution to prevent any other liability arising on account of non-insurance of the truck. In any event, there was no material on record before the Tribunal to hold that the truck was insured on 4.4.1984 with the appellant.

11. Relying upon the provisions of Section 114 of the Evidence Act, the Tribunal has held that the entries made in the R.T.O. records are presumed to be correct and has therefore held that the truck was insured with the appellant on the date of incident. The Tribunal however failed to see that every presumption u/s 114 of Evidence Act is a rebuttable presumption. In the present case, the presumption was rebutted by the cross-examination of PW 2 who admitted that entries in the R.T.O. records were made only on the basis of "AT Form" submitted by the respondent No. 4 without verifying the insurance policy and without cross checking with the insurance company. The presumption was doubly rebutted by a positive evidence of the administrative officer of the appellant who stated on oath that the truck was not insured with the appellant.

12. In *Oriental Fire & Genl. Ins. Co. Ltd. v. Dr. C.R. Purohit I* (1999) ACC 138, a Division Bench of this Court has held that a mere entry in the R.T.O. book

referring to the name of an insurance company as the insurer would not establish the fact that the vehicle in question was in fact insured with it. The present case is stronger wherein the presumption, if any, was rebutted by positive evidence of the officer of the insurance company that the truck was not so insured.

13. In my view, therefore, the Tribunal erred in holding that the truck was insured with the appellant on the date of the accident. Accordingly, I answer the point in the negative. For these reasons, the appeal deserves to be allowed.

14. The appeal is accordingly allowed. The impugned judgment is set aside, however, only to the extent it holds the present appellant liable. The respondent Nos. 4 and 5 shall bear their costs and pay the costs of the appeal to the appellant.