# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**FAO No. 413 of 2003 alongwith**
**CMP Nos.714 of 2004 and**
**CMP No.240 of 2006.**

**Judgment reserved on: 19.5.2006.**

**Decided on: 25th May, 2006.**

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**United India Insurance Co. Ltd.** **.....Appellant.**

***VERSUS***

**Bishani Devi and another** **.....Respondents.**

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***Coram***

**The Hon'ble Mr. Justice Deepak Gupta, Judge.**

***Whether approved for reporting?[1] Yes***

**For the Appellant** : **Mr. Ashwani Sharma, Advocate.**

**For the Respondent-1** : **Mr.Jagdish Thakur, Advocate.**

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**Deepak Gupta, Judge**

This appeal under Section 173 of the Motor Vehicles Act has been filed by the Insurance Company and is directed against the award of the learned Motor Accident Claims Tribunal-I, Kangra at Dharamshala, H.P., in MAC Petition No.3-K/II/2000 decided on 17.5.2003 whereby the Insurance Company has been held liable to pay the amount of compensation.

***2.*** The facts relevant for decision of the case are that the claimant Bishani Devi who died in a motor vehicle accident involving Mini-truck No.HP-11-0012 owned and driven by Rajinder Kumar. The said vehicle was stated to be insured with the appellant Insurance Company. The Insurance Company in its reply took up various pleas. Initially the Insurance Company was not impleaded as a party. During the course of proceedings the driver-cum-owner stated that the vehicle was insured with

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? yes***

the United India Insurance Company and thereafter the same was ordered to be impleaded. The counsel for the owner-cum-driver on 1.1.2003 tendered in evidence a photo copy of the alleged cover note of the vehicle in question. This was stated to have been issued by the United India Insurance Company and was purportedly valid from 26.12.1998 to 25.12.1999. The insurance company in fact did not seriously contest the assertion that the vehicle was insured with it before the Tribunal and the Tribunal held the Insurance Company liable to satisfy the award.

***3.*** In appeal before this Court the Insurance Company took up a plea that in fact in the photo copy of the cover note Ext.R-1 there are interpolations which show that it was valid from 26.12.1998 to 25.12.1999 to cover the date of accident. The Insurance Company stated that in fact after the award had been passed it was verifying the same and it was found out that the original cover note had in fact been issued on 26.06.1998 and was to expire on 25.06.1999. According to the Insurance Company the owner-cum-driver had tampered with the documents. The Insurance Company also took up a plea that though the owner-cum-driver who was duly represented by the counsel before the learned Tribunal was called upon to furnish the particulars of the driving licence so that the same may be verified by filing an application under Order 11 rule 14 CPC the owner-cum-driver did not file any reply thereto nor produced the driving licence. Despite this the Tribunal did not draw adverse inference against the driver of the vehicle.

***4.*** During the pendency of the appeal the Insurance Company filed CMP No.714 of 2004. Alongwith this application it filed a certified copy of the award of the same Motor Accident Claims Tribunal in which with regard to the policy of Insurance the following observations were made:

> "23. Now arises the question from whom the petitioner shall be entitled to claim this amount. Though the petitioner has impleaded respondent No.3 as insurer of the jeep but narration of RW-1 Lekh Ram Assistant of

United India Ins. Company reveals that vehicle No.HP-11-0012 was not insured with them after 25.6.99. The petitioner or owner of the vehicle failed to place on record copy of insurance policy reflecting that at the time of accident, the vehicle was insured with respondent No.3. consequently narration of RW-1 Lekh Ram is believed that after 25.6.99, the vehicle was not insured with them. Accident had taken place on 5.4.2000. So it means, on that day, it was not insured with respondent No.3 and consequently liability to pay compensation would be that of driver and owner of the vehicle."

***5.*** Reply to this application was filed by the claimant/respondent and it was alleged that the Insurance Company cannot be permitted to take this plea in view of the fact that they had not raised any objection with regard to the insurance before the Tribunal. Thereafter, the Insurance Company filed another application being CMP No.240 of 2006 under Order 41 rule 27 CPC by means of which application the Insurance Company sought to prove and place on record the carbon copy of the original cover note i.e. the copy retained by them when the original cover note was given to the insured. No reply has been filed to this application though a number of opportunities has been given.

***6.*** I have heard Sh.Ashwani Sharma, learned counsel for the Insurance Company and Sh.Jagdish Thakur, learned counsel for the claimant.

***7.*** Mr.Ashwani Sharma contends that the applications for leading additional evidence should be permitted. He submits that it is apparent that the insured had filed the tampered and forged photo copy of the cover note before the Tribunal and the Insurance Company believing it to be true had not taken any serious objection with regard to the insurance. It is only later that it came to know about the fact that the vehicle was in fact only insured from 26.6.1998 to 25.6.1999 and there was no insurance on the date of the accident. On the other hand Mr.Jagdish Thakur, learned

counsel for the claimant submits that the Insurance Company has been grossly negligent and cannot be permitted to lead such evidence before this Court.

***8.*** I have given my careful consideration to the matter and have gone through the record. The photo copy of the cover note Ext.R-1 is clearly a copy of the cover note now sought to be filed by the Insurance Company. It is apparent that the month has been changed in the cover note and instead of the figures "06" wherever appearing the figures "12" have been inserted in their place by tampering with the document. No doubt the Insurance Company did not seriously contest this matter before the Tribunal. However, this court cannot ignore the fact that the judgment of the Tribunal is based on a forged document. Fraud and justice cannot exist side by side. No premium can be given to a person who tries to take the court for a ride. To uphold the learned Tribunal's judgment only on this ground would amount to giving premium to falsehood. This, in my view, cannot be permitted.

***9.*** This case again highlights the manner in which the Tribunals totally ignore the Rules of evidence. It may be true that the Tribunals constituted under the Motor Vehicles Act and are not bound by the strict rules of the Evidence Act. However, it cannot be gainsaid that the principles of the Rules of evidence must be applied. In the present case the counsel for the insured tendered in evidence a photocopy of the cover note which was exhibited. The Tribunal should have at least ensured that the original is produced and then exhibited the photo copy. A photo copy of a document can never be admitted to an evidence without production of the original. Normally the insured who should have produced this document on oath. Even if this document could be tendered, though I have my grave doubts with regard to this, the photo copy could not have been tendered under any circumstances. This leads the court in a piquant situation. Though it is clear that it is the insured who tried to influence the judgment of this Court by producing a forged document no action can be taken against

him since he has neither tendered the document personally nor his statement on oath was recorded.

***10.*** The Hon'ble Chief Justice of this Court in **National Insurance Co.** v. **Smt. Bimla Devi and others** Latest HLJ 2005, held as follows:

> "7. It is a cardinal, basic and established principle of evidence law that documents, other than public documents are tendered in evidence through witnesses who, after taking oath prove the documents appropriately as well as the contents of the documents, by way of leading direct evidence. Actually documents are produced and proved through witnesses and their contents also established and proved either by way of primary evidence or secondary evidence but in any event the established and accepted mode of proving documents is by production of witnesses in the court who testify about the correctness, genuineness and authenticity of the documents as well as their contents, mostly through the medium of proving them as and by way of, primary evidence and in certain given situations through the medium of secondary evidence. The purpose of course is two fold; firstly that such a witness appearing in the court is sworn and under oath testifies about a particular document, its genuineness and authenticity as well as its correctness and secondly once under oath and examination, this witness is subject to cross-examination by the opposite party so that the opposite party through the mechanism of cross –examination of such a witness can elicit appropriate information concerning the document itself with respect to its veracity, truthfulness, background, correctness etc. Enough indication of such requirement of law is found in Section 62 of the Evidence Act which refers to the documents as primary evidence and clearly suggests that such documents can be produced for the inspection of the court meaning thereby that through witnesses alone the documents have to be brought on record of the courts. Similarly under Section 63 of the Evidence Act, 'secondary evidence' has been defined and reading together these two Sections, it can be safely said that documents, either by way of 'primary evidence' or otherwise have to be appropriately and properly proved by their production in the courts through witnesses alone."

***11.*** This Court has repeatedly held that photocopies of documents which have only been tendered by the counsel cannot be admitted in evidence. Therefore, in fact there was no proper document before the Tribunal showing that the vehicle was insured with the Insurance Company.

***12.*** In my considered opinion it is necessary to allow the applications being CMP Nos.714 of 2004 and 240 of 2006 to do justice between the parties. Both the applications are, therefore, allowed.

***13.*** It is clear that on the date of the accident i.e. 29.10.1999 the vehicle was not covered by any policy of Insurance. Therefore, the Insurance Company cannot be held liable to pay the compensation. Rather it is the owner-cum-driver i.e. respondent No.2 who is liable to pay the entire amount.

***14.*** It has been pointed out that during the course of the proceedings some amounts have been paid to the claimant out of the amount deposited by the Insurance Company. Keeping in view the fact that the Insurance Company had definitely been negligent in the matter inasmuch as it did not try to ensure as to whether the vehicle was actually insured with it during the course of trial, I hereby order that though the Insurance Company is not liable it shall not be entitled to recover the amount already paid to the claimant from her. It can recover this amount alongwith interest from respondent No.2 after filing an appropriate execution petition in this behalf before the MACT concerned. The Insurance Company shall not be required to file any other proceedings in this regard. The claimant can recover the balance amount from the owner-cum-driver.

***15.*** The appeal is disposed of in the aforesaid terms with no order as to costs.

**( Deepak Gupta )**
**Judge.**

**May 25, 2006.**
**PV**