* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **MAC. APP. No.220/2008**

Reserved on : 22nd January, 2009
Date of decision: 31st March, 2009

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THE ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through : Mr. J.P.N. Shahi, Adv.

versus

SATPAL & ORS. ..... Respondents
Through : None.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1.	Whether Reporters of Local papers may be allowed to see the Judgment?	Yes
2.	To be referred to the Reporter or not?	Yes
3.	Whether the judgment should be reported in the Digest?	Yes

J.R. Midha, J.

1. The appellant has challenged the award of the learned Tribunal on the ground that the offending vehicle bearing No.HR-38 0739 was never insured with the appellant.

2. This case is a classic example of Insurance Company raising frivolous pleas before the learned Tribunal as well as before this Court resulting in wastage of judicial time, delay of trial, harassment to the insured and delay in payment of compensation to the legal representatives of the deceased victim of road accident.

2.1 Respondent No.4 is the owner of truck bearing No.HR-38-0739 who insured the same with the appellant but by mistake, the insurance agent initially mentioned wrong vehicle number on the Cover Note as HR-38-6739 instead of HR-38-0738 which, was on being pointed out, was corrected by the insurance agent on the copy of the insured but the insurance agent did not carry out the correction in the copy with the Insurance Company. However, there was no doubt with regard to the vehicle number because the insurance agent inspected the vehicle and had taken the copy of the registration certificate, permit and fitness certificate at the time of issuance of the cover note which contained the vehicle number. The insured also filled up the proposal form at the time of taking the Cover Note. The aforesaid insurance policy was also issued by the appellant in respect of the same vehicle for the subsequent two years i.e., 1996-97 and 1997-98, which contained the correct vehicle number.

2.2 The Insurance Company took a false plea before the learned Tribunal that they had not insured the vehicle number involved in the accident as a result of which the ex-parte award was passed against the owner who applied for setting aside the ex-parte award which was set aside subject to deposit of Rs.50,000/-. The owner unsuccessfully challenged the said order before this Court and thereafter, deposited Rs.50,000/- with the learned Tribunal whereupon the ex-parte

award was set aside. The Insurance Company again took up the same plea before the Tribunal that they had not insured the offending vehicle.

2.3 The owner of the vehicle led sufficient evidence to prove that the offending vehicle was insured with the appellant. The owner also proved two renewals of the policy which contained correct vehicle number.

2.4 The owner also summoned the witness from the Road Transport Authority to prove that the wrong vehicle number mentioned in insurance records was not owned by him. The name of the owner of that vehicle was also placed on record to prove that the insured had no connection with wrong vehicle number mentioned in the insurance records and, therefore, no insurance policy could have been taken by him or even issued by the Insurance Company in respect of the said vehicle. The appellant did not cross-examine the witnesses of the owner on material particulars. No evidence was led by the appellant to rebut the evidence of the owner.

2.5 The learned Tribunal passed an award against the appellant and imposed cost of Rs.25,000/- on the appellant for taking the dishonest plea to avoid its liability by taking advantage of the mistake of the agent in noting a wrong vehicle number on the cover note.

2.6 Despite very clear finding, the appellant has challenged the award before this Court again raising the same false plea.

2.7 The frivolous defence of the appellant before the learned Tribunal has resulted in irreparable loss and injury to the claimants who lost their young son on 29th May, 1996 and the final award was passed by the Tribunal on 11th January, 2008 and the claimants received the payment after about 12 years.

2.8 The owner of the vehicle also suffered inconvenience for contesting a frivolous litigation with the appellant and suffered an ex-parte award which was ultimately set aside upon deposit of Rs.50,000/- by the owner which he was compelled to challenge before this Court.

2.9 The judicial time wasted before the learned Tribunal and before this Court cannot be computed in terms of money. It is noted that about 30 hearings took place before the learned Tribunal and 9 hearings took place before this Court.

2.9.1 It is necessary to record that the relevant facts which are given in the succeeding paras.

3. On, 29th May, 1996, a young boy named Vijay Kumar, aged 16 years was going on his bicycle towards Gopi Nath Bazaar in Delhi Cant when he was crushed by truck No.HR-38 0739 near MES GE Office.

4. Respondents No.1 and 2 are the parents of the deceased-Vijay Kumar and they filed the petition before the learned Tribunal claiming compensation of Rs.6,00,000/- from respondent No.3 (driver), respondent No.4 (owner) and the appellant (insurer) of the offending truck.

5. The appellant appeared before the learned Tribunal and filed an application dated 3rd November, 1988 under Section 151 of the Code of Civil Procedure for deletion of their name from the array of the respondents on the ground that cover note No.431483 in the name of Amit Khurana for the period 12th September, 1995 to 11th September, 1996 was issued for vehicle No. HR-38 6739 but the vehicle number has been fraudulently changed to HR-38 0739. It was submitted that there was manipulation in the insurance policy by changing the vehicle No. from HR-38 6739 to HR-38 0739.

6. On 7th October, 1999, the learned Tribunal discharged the appellant from the proceedings by accepting their plea that forgery has been committed in the cover note by changing the vehicle number from HR-38 6739 to HR-38 0739.

7. On 17th February, 2001, the learned Tribunal passed an ex-parte award in favour of respondents No.1 and 2 (parents of the deceased) and against respondent No.3 (driver) and respondent No.4 (owner).

8. On 18th December, 2002, respondent No.4 (owner) filed an application for setting aside of the ex-parte award dated 17th February, 2001 on the ground that the offending truck bearing No. HR-38 0739 was duly insured with the appellant at the time of the accident and respondent No.4 had intimated the appellant of the summons received from the Learned Tribunal and had also requested the appellant to defend the

case. Respondent No.4 had also handed over a vakalatnama to the appellant who was obliged to defend the case on behalf of the insured under the policy. This application was allowed by the learned Tribunal vide order dated 20th November, 2004 subject to deposit of Rs.50,000/- with further direction to release the said amount to respondents No.1 and 2 subject to adjustment in the final award.

9. Respondent No.4 unsuccessfully challenged the aforesaid order dated 20th November, 2004 before this Court and thereafter, complied with the order by depositing Rs.50,000/- with the learned Tribunal on 3rd January, 2005 which was released to respondents No.1 and 2 on 4th January, 2005.

10. On 20th December, 2004, respondent No.4 filed an application under Section 170 of the Motor Vehicles Act read with Order 1 Rule 10 of the Code of Civil Procedure for impleading the appellant as a respondent on the ground that the appellant has played fraud and mischief upon the learned Tribunal by taking a false plea before the learned Tribunal, pursuant to which the appellant was discharged and deleted from the array of the parties on 7th October, 1999. This application was allowed vide order dated 18th March, 2006 and the appellant was impleaded as respondent No.3 before the learned Tribunal.

11. The appellant filed the written statement before the learned Tribunal in which once again the same plea was taken that the appellant had insured vehicle No. HR-38 6739 vide cover note No.431483 for the period 12th September, 1995 to 11th September, 1996 and respondent No.4 (owner) had forged and tempered with the cover note by changing the vehicle No. HR-38 6739 into HR-38 0739.

12. The learned Tribunal framed a specific issue, namely, issue No.2 which is reproduced hereunder:-

"2. Whether the offending vehicle was duly insured with Oriental Insurance Co. Ltd."

13. At the trial, respondent No.4 appeared as R2W1 and deposed that he was the registered owner of vehicle No. HR-38 0739 in 1995-96 and he insured the same with Oriental Insurance Co. Ltd. through its agent, Tirlochan Singh vide cover note No.431483 dated 12th February, 1995 for the period 12th September, 1995 to 11th September, 1996. He further stated that he gave copy of certificate of registration of the vehicle, copy of permit and copy of fitness certificate to the agent at the time of the insurance. However, the agent wrongly wrote vehicle No. HR-38 6739 on the cover note instead of HR-38 0739 whereupon respondent No.4 pointed out to the agent who corrected the number on the copy of the cover note provided to respondent No.4. Copy of cover note was marked as R3W1/R1.

13.1 R2W1 (respondent No.4) further deposed that he notified the appellant about the accident on 29th May, 1996. R2W1 stated that he received a letter dated 17th April, 1997-Ex.R3W1/R6 from the appellant in which it was stated by the appellant that they have received the summons from the learned Tribunal and, therefore, respondent No.4 should send the registration certificate, permit, fitness certificate, driving licence, FIR, site plan, policy, etc. to the appellant.

13.2 R2W1 replied to the above letter on 13th May, 1997-Ex.R2W1/1 in which he stated that he had already informed the appellant about the accident and he further stated that he has also received the summons from the learned Tribunal which were being forwarded to the appellant. The witness attached the copies of the registration certificate, permit, fitness certificate, driving licence, FIR and cover note as demanded by the appellant. R2W1 further deposed that he addressed the letter dated 13th June, 2006 – Ex.R2W1/R8 to the appellant stating that the case was listed before the learned Tribunal on 12th July, 2006. Respondent No.4 attached the copy of the cover note No.431483, insurance policies for the period 1996-97 and 1997-98-Ex.R3W1/R9 and Ex.R3W1/R10, copy of the registration certificate, copy of the letter dated 13th May, 1997 as well as the certificate issued by Excise and Taxation Department, Faridabad with respect to

vehicle No. HR-38 6739, owned by Smt. Naina Maghu – Ex.RW2W2/A.

13.3 R2W1 further deposed that he was never the registered owner of vehicle No. HR-38 6739 and he had no connection with the said vehicle. He further deposed that as per the investigation done, Smt. Naina Maghu wife of Shri Satish Maghu resident of Faridabad was the owner of vehicle No. HR-38 6739. The documents obtained from the office of Assistant Excise and Taxation Officer, Faridabad were exhibited as Ex.RW2W2/A, Ex.RW2W2/B and RW2W2/C.

13.4 The appellant did not cross-examine R2W1 (respondent No.4) with respect to any of the aforesaid statements made as well as the documents exhibited by the witness.

14. Respondent No.4 (owner) produced another witness, namely, Mr. Vivek Aggarwal, Taxation Inspector from the office of the Excise and Taxation Commissioner, Haryana as R2W2 who deposed that vehicle No. HR-38 0739 was registered in the name of respondent No.4 and vehicle No. HR-38 6739 was registered in the name of Smt. Naina Maghu. The witness exhibited the extracts from the demand and disposal register of vehicle No. HR-38 0739 as Ex.R2W2/B and in respect of vehicle No. HR-38 6739 as Ex.R2W2/C.

15. The appellant produced only one witness, namely, Mr. P.R. Bansal who appeared as R3W1 and deposed that the appellant had served notice under Order 12 Rule 8 CPC to

respondent No.4. He further deposed that he had brought the premium register as per which respondent No.4 got vehicle No. HR-38 6739 insured with Oriental Insurance Co. Ltd. for the period 12th September, 1995 to 11th September, 1996.

15.1 R3W1 did not make any statement to rebut what had been proved by R2W1 (respondent No.4).

15.2 The cross-examination of R3W1 is very interesting. He admitted that the cover note is issued by the Development Officer and it is mandatory for him to see the vehicle as well as to check the registration certificate, permit and fitness certificate of the vehicle and to retain the copies of the said documents. The witness was not aware whether it was checked from the Development Officer who had wrongly mentioned the vehicle number. The witness also showed ignorance that vehicle No. HR-38 6739 was registered in the name of Smt. Naina Maghu. The witness admitted the receipt of Ex.R3W1/R7 and Ex.R3W1/R8. The witness also admitted that the policies for the subsequent years, namely, Ex.R3W1/R9 for 1996-97 and Ex.R3W1/R10 for 1997-98 were issued by the appellant.

16. The learned Tribunal decided issue No.2 in favour of respondent No.4 holding that the offending vehicle bearing No. HR-38 0739 was duly insured with the appellant. The findings of the learned Tribunal on issue No.2 are reproduced hereunder:-

"9. **ISSUE NO.2**

This issue is as regard the fact whether offending vehicle was insured with R-3 insurance company. The case of the insurance company that Mr. Amit Khurana had taken a insurance policy earlier in respect of truck no.HR 38 6739 from it and had manipulated the number of the vehicle as HR 38 0739. R-2 while deposing as R2W2 had testified that policy was taken by him in respect of vehicle no. HR 38 0739 from R-3 through agent Trilochan Singh, who by mistake had written the vehicle no. as HR 38 6739 and on being pointed out the mistake, had corrected the vehicle number as HR 38 0739 in the copy supplied to the witness. Further vehicle no. HR 38 6739 had been found to be registered in the name of Smt. Naina Maghu, as per testimony of R2W2 Vivek Aggarwal, a witness from office of Deputy Excise and Taxation Commissioner, Sector 12, Faridabad, Haryana, R-2 had also deposed while deposing as R2W2 that he had no concern with vehicle no. HR 38 6739. R3W1 while deposing on behalf of R-3 insurance company in cross examination admitted the fact that as per the rules of insurance, it was mandatory in case of commercial vehicles to check the registration certificate, permit and the fitness certificate of the vehicle to be insured and further admitted that it was mandatory for the development officer to retain the copies of aforesaid documents but such copies furnished by the insurer while taking the insurance policy had not been produced and the plea being taken on behalf of insurance company is dishonest to avoid its liability taking advantage of the fact that a mistake was committed by its agent while recording the vehicle no. and which was corrected in the copy given to the insurer. Said agent by whom the insurance cover was prepared and premium receipt given, has not been produced by the insurance company nor the documents supporting the contention either in respect of vehicle no. HR 38 0739 or in respect of vehicle no. HR 38 6739. Accordingly, I hold that offending vehicle being HR 38 0739 was duly insured with R-3 Oriental Insurance Company Ltd."

17. The learned Tribunal imposed the cost of Rs.25,000/- on the appellant for taking a false plea that the offending vehicle was not insured with it and continuing with the same stand despite the evidence to the contrary on record and having correct knowledge of all the facts forcing respondent No.4 (owner) to contest the proceedings and to deposit a sum of Rs.50,000/-. It was also recorded that respondent No.4 had also approached this court and was forced to incur unnecessary expenses. The findings of the learned Tribunal in para 13 of the award are reproduced hereunder:-

> " 13. The R-3 insurance company has taken a preliminary objection stating that vehicle in question was not insured with it and continued with the stand right upto the stage of final arguments despite evidence to the contrary on the record and having the correct knowledge of the facts forcing R-2 to contest the proceedings and to deposit a sum of Rs.50,000/- and it was submitted on behalf of R-2 that R-2 had also to approach Hon'ble High Court in the matter and was forced to incur unnecessary expenses. A sum of Rs.25,000/- as exemplary cost is imposed on R-3 insurance company which shall be paid and deposited in the court by R-3 insurance company along with the award amount. Further an amount of Rs.50,000/- which was paid by R-2 and received by petitioner no.2 Smt. Vidya shall be deducted from the award amount by R-3 insurance company and instead, the amount shall be paid along with interest @ 9 per cent per annum to R-2."

18. The appellant has filed this appeal on the ground that the offending vehicle bearing No. HR-38 0739 was not insured with it and therefore, they are not liable to pay the award amount to the claimants.

19. There is no merit or substance in this appeal. The appeal is misconceived and without any substance. There is clear evidence on record that vehicle No. HR-38 0739 was validly insured with the appellant on the date of accident i.e. 29th May, 1996. The appellant raised a false plea before the learned Tribunal as well as this Court. The appellant is also guilty of making false statements on oath before the learned Tribunal. The appellant again made false statement on oath before this Court in the statement recorded on 22nd January, 2009. The reasons for above finding are as under:-

i) It is an admitted fact that respondent No.4 is the owner of offending vehicle bearing No. HR-38 0739. The registration certificate, permit as well as fitness of the said vehicle are in the name of respondent No.4.

ii). On 12th September, 1995, the respondent No.4 insured the truck bearing No. HR-38 0739 with the appellant through the agent Tirlochan Singh who issued cover note No.431483 but recorded a wrong number, namely, HR-38 6739 which was later on corrected by him on the copy given to respondent No.4. However, the correction was not carried out in the record of the appellant.

iii) The appellant did not produce the agent, Tirlochan Singh to rebut this plea.

iv) The appellant did not produce the copies of the registration certificate, permit, fitness certificate, etc. taken at the time of the issuance of the cover note.

v) The appellant also did not produce the proposal form directed by this Court vide order dated 5th May, 2008.

20. The plea of the appellant that respondent No.4 insured truck No. HR-38 6739 is false and not even plausible because:-

(i) Respondent No.4 is not the owner of truck No. HR-38 6739 and has no connection with the said vehicle.

(ii) Truck No. HR-38 6739 is owned by Smt. Naina Maghu which is proved by the testimony of R2W2 and, Ex.RW2W2/B and Ex.RW2W2/C.

(iii) The appellant has admittedly insured the offending truck No. HR-38 0739 for the subsequent periods 1996-97 (Ex.R3W1/R9) and 1997-98 (Ex.R3W1/R10).

21. It is well settled that only an owner of a vehicle can take an insurance policy. A person who is not the owner can't take the insurance policy because he has no insurable interest in the vehicle. Admittedly, the policy has been taken by the respondent No.4 and respondent No.4 is the owner of only vehicle No.HR-38 0739. Respondent No.4 is not the owner of vehicle No.HR-38 6739 and, therefore, respondent No.4 had no insurable interest in vehicle No. HR-38 6739 which is owned by Ms. Naina Maghu. Respondent No.4 could not have

taken and the appellant could not have issued an insurance cover in respect of the vehicle No. HR-38 6739.

22. The cover note bearing No.431483 was issued by the appellant to insure vehicle No. HR-38 0739 but the agent initially mentioned a wrong number by mistake, namely, HR-38 6739 which was corrected on the copy given to respondent No.4 but the corresponding correction was not carried out in the records of the appellant. Although, the appellant was fully aware of the correct position but they raised a false plea knowing it to be false with the dishonest intention of avoiding the liability. The appellant made false statement in the written statement before the learned Tribunal as well as on oath in the witness box. False statements have also been made in the present appeal as well as in the statement recorded on oath on 22nd January, 2009.

23. The appellant has miserable failed in its duty under the law. In the case of **Ramakrishna Reddy vs. Manager, HMT Ltd., 2003 ACJ 105,** the Division Bench of Karnataka High Court held as under:-

> "19. We may also at this stage refer to the pernicious habit of some branches of insurance companies in filing stereotyped written statements denying all and everything. They routinely deny the insurance, then alternatively plead that even if there was an insurance, there was a breach of terms of the policy, that driver did not have a valid driving licence, and lastly there was no negligence on the part of driver of the insured vehicle. They do not bother to verify whether the insurance policy covered the risk or not and whether driver had a licence or not. We

recognize that insurers are sometimes handicapped for want of full information, while giving instructions to their counsel and, therefore, the objections may be general in nature. We are also conscious that we cannot frown upon a party taking all permissible defences. But, applications for motor accident claims are not to be treated by insurers as normal private adversary litigation, where technical contentions can abound in pleadings and the sole intention is winning the *lis*. Under the policies of insurance, the insurers discharge statutory obligations towards third parties. They should do so keeping in view the object and spirit of the Act, and the position of hapless victims of motor accidents. Insurers should balance their concern to safeguard its financial interest, with their obligations as instruments of social justice, under the *Motor Vehicles Act*.

19.1 The claimants are not litigants by choice, but are constrained to approach the Tribunal, because of death of the bread-winner or injury to self, and because the owner and insurer of the vehicle involved, fail to pay the compensation. The insurer should bear in mind that the claimants are also handicapped in obtaining particulars of the insurance policy held by owner or driving licence held by the driver of the vehicle, and they solely depend upon the police for these particulars. The insurer should, therefore, verify whether there was any insurance policy or not, whether the insured was covered by insurance policy in regard to the claim or not, and whether the driver had a licence or not before filing its statement of objections and narrow down the area of controversy. If the insurers were to file 'play it safe' written statements, without verifying these aspects and mechanically denying all petition averments, the trial gets delayed and the claimants are put to misery and unjustly kept away from the direly needed compensation. It is time that insurers get rid of 'deny everything and await the award syndrome' and become responsible and responsive opponents in motor accident claims. We make it clear that the above observations are intended only for those officers of insurance companies who refuse to recognize their statutory obligations to third parties, under

the insurance policies issued to the insured."

24. In another case of **Ramadevsing vs. Chudasma, 1999 ACJ 1129,** the Division Bench of Gujarat High Court held as under:-

> "26. So far as the funds to defend their cases are concerned, insurance company would never feel paucity of funds. They raise defences all and sundry and at times their goal is to see that the claim of the claimant, if not defeated is at least delayed. With this purpose and motive they contest the claims under the *Motor Vehicles Act.* We have not come across any case where on receipt of the notice by the claimant(s) for the claim or in service of the summons from the Claims Tribunal the insurance company, more particularly, in cases where insurance of the vehicle is not disputed, offering or making payment at least of the amount which according to it the claimants would be entitled to. We have yet to come across such gesture. The only purpose with which the insurance company depends the claim petition is to see as to how the case of the claimant is defeated and on its failure to do so, how the claim of the claimant would be reduced to a minimum and/or delayed."

25. This is not a simple case of making false statements. It has caused severe and irreparable damage to the claimants and the owner which needs to be recorded. The insured, namely, respondent No.4 reported the accident to the appellant on 17th April, 1997 and, therefore, the appellant was obliged to defend the case before the learned Tribunal. However, the appellant filed a frivolous application before the learned Tribunal and got itself discharged without informing respondent No.4 which resulted in an ex-parte award dated 17th February, 2001. Respondent No.4 had no option but to

file an application under Order 9 Rule 13 CPC which was allowed subject to deposit of Rs.50,000/-. Respondent No.4 unsuccessfully challenged that order before this court and, thereafter, deposited Rs.50,000/-. Respondent No.4 had to contest the whole case and finally the award was passed against the appellant on 11th January, 2008.

26. The frivolous plea set up by the appellant also caused great prejudice to respondents No.1 and 2 who lost their only son and the compensation was delayed unnecessarily due to the frivolous plea raised by the appellant. The appellant did not initially satisfy the award and filed the present appeal and also applied for stay and upon being unsuccessful, the appellant finally deposited the award amount before the learned Tribunal on 30th April, 2008 which was released to respondents No.1 and 2 on 24th July, 2008. Respondents No.1 and 2 (claimants) received the award amount after waiting for 12 years only because of the frivolous plea set up by the appellant.

27. The appeal is dismissed with costs.

28. This appeal is gross abuse and misuse of the process of law. This is a fit case for launching a prosecution under Section 340 of the Code of Criminal Procedure. However, considering that the lower courts are already over-burdened with work, I refrain from invoking Section 340 of the Code of Criminal Procedure but I impose a cost of Rs.60,000/- on the

appellant for raising a false plea before the learned Tribunal and making false statements on oath before the learned Tribunal as well as before this Court and wasting the judicial time.

29. The appellant is directed to deposit the cost of Rs.60,000/- with the Registrar General of this court within one week. After depositing the cost with this Court, the appellant shall deduct the cost from the salary of the officers responsible for this case.

30. The copy of this order be also sent Dasti to the Chairman of Oriental Insurance Co. Ltd. who shall determine the responsibility of the concerned officers for deduction of the cost within four weeks. Compliance report be filed before this Court within three months.

31. List for compliance on 1st May, 2009.

J.R. MIDHA, J

March 31, 2009
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