

**IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JODHPUR**

O R D E R

S.B. CIVIL MISC. APPEAL NO.734/1997

The Oriental Insurance Co. Ltd.

Vs.

Mangilal & Ors.

Date of order : 31.3.2010

HON'BLE MR.JUSTICE A.M.SAPRE

Mr. U.C.S. Singhvi, for the appellant.

Mr. Rajesh Panwar & Mr.B.M.Sharma, for the respondents.

BY THE COURT:

1. The decision rendered in this appeal shall also govern disposal of other connected appeal being C.M.A.No.733/1997 “The Oriental Insurance Co. Ltd. Vs. Bansilal & Ors.” as both these appeals arise out of one award and secondly relate to one accident.

2. This is a misc. appeal filed by Insurance Company (for short hereinafter called “the Company”) under Section 173 of Motor Vehicles Act (for short hereinafter called “the Act”) against an award dated 29.8.1997 passed by MACT-1st, Jodhpur in Claim Case No.212/95 and 213/95 respectively.

3. By impugned award, the Claims Tribunal partly allowed the claim petition of claimants filed under Section 166 of the Act and awarded to claimants a sum of “Rs.1,90,000/-” for the death of one “Lalit Kumar”, who died in vehicular accident on 8.8.1990.

4. In this appeal and also in connected one filed by

Company, only one point is raised. According to Company (appellant) the vehicle in question was not insured with the Company on the date of accident or prior to it and hence no liability could be fastened upon the Company arising out of such accident. In other words, the contention of the Company was that alleged cover note (Ex.P-6) relied on by claimants and also by the so called Insured (owner of offending vehicle) for fastening liability upon the Company is forged/fake one and hence not binding on the Company. It is essentially this issue, which was gone into by the Tribunal and was answered against the Company holding them to be liable to suffer the liability arising out of such accident on the strength of policy/cover note (Ex.P-6), which has given rise to filing of this appeal by the Company (Insured).

5. So the only question that arises for consideration in this appeal is whether Tribunal was justified in holding on facts/evidence that Company (appellant) was liable on the strength of alleged cover note (Ex.P-6) to suffer the liability arising out of an accident. In other words, the question that arises for consideration in this appeal is whether alleged cover note (Ex.P-6) is binding on the Company so as to hold that concluded contract of insurance between the insured and insurer came into existence in relation to vehicle in question thereby rendering the Company liable to indemnify the liability arising out of accident.

6. In order to decide the aforesaid question, few relevant facts need mention in brief infra.

7. The appellant is the Insurance Company. One Ajay Bhargava was in the employment of Company as Probationary Development Officer posted at Jalore. In his capacity as Development Officer, he was in possession of several cover notes, which are needed by Insurance Company as and when any contract of insurance is entered into by company with any owner of vehicle.

8. On 23.5.90 (Ex.NAW-1A) the Company terminated

the services of Mr.Bhargava with immediate effect. The termination order said that he should immediately handover all cover notes and stationery which were in his possession to D.O. Jodhpur. This note was also published in daily newspaper on 27.7.90 (Ex.NAW-2A) by way of public notice. In the publication, the company mentioned specific cover notes, which were in possession of Mr.Bhargava and warned the public at large that company shall not be liable to cover the risk of person (insured) if it is based on cover notes, whose numbers are mentioned in the publication notice. This is what was published in notice.

“It is to inform that Shri Ajay Bhargava- Prob. Development Officer working under our Branch Office, Jalore Posted at Barmer (Divisional Office, Jodhpur) is no more in the service of the company. Any risk cover note issued by him covering any type of risk whatsoever shall be invalid and not bound the company in any manner. Details of risk cover notes are as under:-

Class of Insurance	Cover-notes From	Nos. To	Total Nos.
1.Fire	41028	41050	23
2.Motor	356047	356050	04
3.Motor	790676	790700	25
4.Misc.	189362	189375	14

Anybody dealing with Shri Ajay Bhargava on behalf of the Company shall do so on his own risk and responsibility.”

9. On 8.8.90 two persons by name Lalit Kumar and Ummed Ram were going on motorcycle (CKQ 8755) on a highway when they met with an accident with one truck (RJ-2-9125). On account of this accident, both died on the spot. This truck was owned by Surajman Singh (respondent No.8) and was being driven by Dalle Khan (respondent No.7).

10. It is this event, that led to filing of 2 claim petitions

by the legal representatives of two deceased under Section 166 of the Act against Surajman Singh i.e. owner of truck, its driver Dalle Khan and appellant claiming compensation for the death of Lalit Kumar/Ummmed Singh out of which this appeal arises. According to claimants, the truck in question was insured with the appellant on 8.8.90 i.e. the day on which the accident occurred and hence all the three non-applicants are liable to suffer the liability arising out of such accident qua third party i.e. two deceased.

11. The Company denied their liability in toto. According to them, the alleged cover note bearing number 790700 was in illegal possession of their former employee - Ajay Bhargava who did not return to Company on termination of his services on 23.5.90 and despite knowing the fact that he is no more in their service since 23.5.90 misused it by getting alleged cover note issued on 8.8.90 in favour of Surajman Singh. It was alleged that neither company was party to this transaction nor it ever received any premium from so called Insured nor authorized Mr.Bhargava to issue such cover note on and after 23.5.90. It was averred that no liability therefore could be fastened upon the Company on the strength of alleged cover note, which was forged/fake having been issued in contravention of the requirement of Section 64(v)(B) of Insurance Act. It was alleged that since accident occurred on 8.8.90 which was much subsequent to termination of Mr.Bhargava's services (23.5.90) and hence the alleged cover note dated 8.8.90 cannot be used against Company for enforcing any liability. This in substance was the defense of Company.

12. As observed supra, the Tribunal did not accept the defense of Company and held them liable to suffer the liability arising out of accident. It is this award, which is sought to be impugned by the Company in this appeal.

13. Having heard the learned counsel for the parties and on perusal of record of the case, I am inclined to allow the appeal and in consequence, set aside the award qua appellant (Insurance

Company).

14. In my opinion, on facts which are not in dispute, no liability could be fastened upon the Company on the strength of cover note (Ex.P-6) by the Tribunal.

15. It is a well settled principle of law that insurance of any vehicle/property is in the nature of contract and is capable of being enforced by the parties only when it becomes a concluded contract between the parties as provided under the Contract Act. It is equally a well settled principle of law that company (insurer) being a juristic entity is required to function through their employees and to whom a specific authority to do any specific act is given. In other words, there has to be an authority with an employee to act on behalf of company, so also relationship of master and servant.

16. Coming now to the facts of this case, it is established beyond any shadow of doubt that company had terminated the services of Ajay Bhargava much prior to occurrence of accident i.e. on 23.5.90. It was also published giving due notice to public at large in paper on 27.5.90 by Company. Not only that even the number of cover notes, which were in his possession were also published. The Company had thus done everything which it was expected to do in the case of this nature thereby making it known to public at large that no dealing should be made by any member of public with Mr.Bhargava in relation to cover notes mentioned in notice or otherwise and if they do so, then it would not be binding on the Company.

17. In my opinion, the very fact that alleged cover note was with Ajay Bhargava even after he ceased to be in services of Company and it was issued on 8.8.90 i.e. the day on which accident occurred would go to show that it was fraudulently obtained by insured from Ajay Bhargava to somehow cover the risk/liability arising out of accident occurred on 8.8.90. In fact, the accident is said to have occurred at 9.30 AM on 8.8.90 whereas

alleged cover note is issued at 3.30 PM on 8.8.90 day. In any event, since such cover note was issued after 23.5.90/27.5.90 in favour of insured, the same was not binding on the Company because the company had already made known to public at large on 27.5.90 that cover note bearing number “790700” would not bind the Insurance Company if used by any person for enforcing any liability after 23.5.90. In my opinion, a public notice was sufficient to every member of public absolving the Insurance Company from any liability.

18. Learned counsel for the respondent (claimants) and insured however while supporting the finding of Tribunal argued that since the cover note was signed by one Shyamlal and not by Mr.Bhargava and hence it was binding on company. To say the least, the submission has no merit. In the first place, it is established beyond any doubt that alleged cover note was in possession of Mr.Ajay Bhargava after 23.5.90. Secondly it was proved by publication notice dt 27.7.90 that it was in his possession. Thirdly Mr.Bhargava who was mastermind in creating this issue deliberately did not become signatory to cover note and instead used some fictitious name. Fourthly it was for the claimants to have examined so called “Shyamlal” to show that he had acted on behalf of company as their employee with full authority to accept the premium and issuance of the cover note from Insured. It was not done. Fifthly when the company disowned Shyamlal to be in their employment, then there was no need for the company to have proved any more this fact and lastly the mastermind Ajay Bhargava was interested in making personal gains not only for himself but at the same time he was interested in obliging insured. It is for all these reasons, I cannot accept this submission of learned counsel for the respondents nor can I concur with the findings of Tribunal on this issue. It is accordingly reversed and answered in favour of appellant.

19. In my considered view, it is a clear case of fraud

played by the ex-employee of company in conspiracy with the insured by taking benefit of cover note in question. It is a settled law that fraud vitiates everything. A person who has no authority to act on behalf of another cannot bind him for any of his acts. In this case, the cover note being a waste paper for company on the date of accident, was not capable of being enforced against the company. In other words, there did not emerge any concluded contract of insurance between the appellant-company (insurer) and owner of vehicle as (insured) on the strength of cover note dated 8.8.90 (Ex.P-6). In this view of the matter, no liability arising out of accident could be fastened upon the appellant (Insurance Company) on the strength of cover note dated 8.8.90.

20. Accordingly and in view of foregoing discussion, the appeal succeeds and is allowed. Impugned award is set aside against the appellant. As a consequence, the claim petition filed by claimants against the appellant out of which this appeal arises, is dismissed. It is however maintained and decreed by upholding the award of Tribunal to this extent so far as owner and driver of offending vehicle is concerned.

No cost.

(A.M.SAPRE),J.

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