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

Reserved on: 7th September, 2012
Pronounced on: 28th September, 2012

+ MAC.APP. 538/2004

THE NEW INDIA ASSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

MAHA SINGH & ORS. ..... Respondents
Through: Mr.R.K. Singh, Adv. with
Ms. Deepa Rai, Advocate

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant New India Assurance Company Limited impugns a judgment dated 31.05.2004 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹1,80,000/- was awarded in favour of the Respondents No.1 and 2 for the death of Satya Narain, (their son) who was a bachelor and aged 18 years at the time of the accident.

2. The only ground of challenge raised by the Appellant Insurance Company is that Baljit Singh, the insured and owner of the offending bus No.DEP-7329 died during pendency of the Claim Petition; a notice under Order XII Rule 8 CPC (Ex.RW-1/2) was served upon his legal representatives. A true copy of the insurance policy was proved as Ex.RW-1/5 to show that premium @ ₹12/- per passenger for 51 passengers was paid to cover the limited liability of ₹15,000/- per passenger and thus, the Appellant did whatever was

possible to prove that its liability was limited, yet, the Claims Tribunal held that the Appellant failed to prove the insurance policy and that its liability was unlimited. It is urged that on the face of evidence, the conclusion reached by the Claims Tribunal is not tenable.

3. On the other hand, learned counsel for the Respondents (the Claimants) urged that the notice under Order XII Rule 8 CPC is purported to be served upon Baljit Singh's legal representatives in the year 2003. This accident took place in the year 1988. It is difficult for the legal representatives and even for that matter, for the owner of the vehicle to preserve the insurance policy for 15 years.

4. Learned counsel for the Claimants further argues that the number of Insurance Policy dated 07.11.2003 Ex.RW-1/2 was wrongly mentioned and this was not noticed at all.

5. I have before me the Trial Court Record. Baljit Singh, the owner of the offending vehicle, who was Respondent No.2 before the Claims Tribunal contested the Claim Petition by filing a written statement in the year 1989 and stated that the bus No.DEP-7329 was duly insured by policy No.3132020/01/41 dated 18.04.1988. He died sometime in the year 1995. He was never required to produce the original Insurance Policy till he was alive. Thus, it cannot be said that the Appellant made all efforts to produce primary evidence to prove the Insurance Policy. On top of it, the true copy of the Insurance Policy dated 18.04.1988 placed on record shows its number as 3132020101141. In the written statement the number of Insurance Policy dated 18.04.1988 is mentioned as No.3132020/01/41, whereas in the notice under Order XII Rule 8 CPC, the number of the Policy was mentioned as 31/1141 valid from 18.04.1988 in respect of vehicle No.DEP-7329, which is

entirely different from the true copy of the policy and from the number as mentioned in the written statement. Thus, it cannot be said that the Appellant Insurance Company made sincere efforts to produce the primary evidence. The true copy of the policy which was marked as Ex.RW1-5 therefore was not properly proved and was not permissible in evidence as secondary evidence relating to documents can be given only when one of the conditions laid down in Section 65 of the Indian Evidence Act is proved.

6. In *Chandro Devi & Ors. v. Jit Singh & Ors., 1989 ACJ 41,* this Court held that in the absence of proof of the insurance policy by the insurance company it shall be presumed that the liability of the insurance company is unlimited. Relevant para of the report says:-

> *"43…….The insurance company must prove that the policy in question is the 'Act only' policy. The amount mentioned by the statute is the minimum amount. But the policy can always cover higher risk to third party by taking additional premium. It is obligatory on the part of the insurance company to prove the insurance policy and its terms and conditions. In a number of decisions by this court, it has been held that where the insurance company fails to produce the insurance policy or prove the same in accordance with law, then, it shall be presumed that the liability of the insurance company is unlimited. As I have already held that the insurance company has failed to prove the insurance policy in accordance with law, so I hold that the liability of the insurance company is unlimited in the present case."*

7. A Division Bench of this Court in *New India Assurance Company Limited v. Darshan Singh & Ors., 1992 ACJ 533* held that where the Insurance Company wished to take a defence (in a Claim Petition) that its liability was not in excess of the statutory liability it should file a copy of the insurance policy along with its defence. It was observed that a true copy of the policy would not be enough to prove the plea of limited liability.

8. In *M/s. New India Assurance Company Limited v. Hayat Singh, FAO No.125/2003,* decided on 06.02.2008, a learned Single Judge of this Court held that the Insurance Company has not only to prove the Insurance Policy but to properly explain the manner in which the premium is charged under different heads to prove that its liability is limited. It was held that mere exhibition of a document cannot mean that such a document stands proved and that secondary evidence can be permitted with respect to an insurance policy, if the Insurance Company takes steps to summon the original insurance policy from the insured and the same is not produced. Relevant portion of the judgment is extracted hereunder:-

> *".....There cannot be any dispute that it is for the insurance company not only to prove the insurance policy but to properly explain as in what manner the premium amount under different heads has been paid by the insured. There also cannot be any dispute to the legal preposition that it is only in the absence of primary evidence, the parties can be allowed to lead evidence by way of secondary evidence. The appellant failed to take any steps either by sending the requisite notice under Order 12 of Rule 8 CPC so as to summon the original insurance policy from the insured or by summoning the insured himself in the evidence. Mr.D.K. Arora, Branch Manager of the appellant insurance company who entered the witness box as RW3 had also failed to properly prove carbon copy of the insurance policy. Earlier he had tried to prove true copy of the insurance policy but later on produced the carbon copy of the insurance policy which was exhibited in his deposition as exhibit R3W1. The said witness could not even identify as to who had signed the said policy and what his designation was. He also admitted that original policy in question was not issued under his signatures. No weightage can be given to such fledgling and incoherent statement given by the said witness produced by the appellant insurance company. It is thus apparent that the appellant insurance company has failed to discharge the onus to prove the carbon copy of the insurance policy in accordance with the law. The mere exhibition of a document cannot mean that such a document stands proved. The appellant could have been permitted to lead the secondary evidence for proving carbon copy of insurance*

policy only after it had taken the steps to summon the original insurance policy from the insured as original policy is the only primary document."

9. I am supported in this view by the report of the Supreme Court in *Tejinder Singh Gujral v. Inderjit Singh & Anr., (2007) 1 SCC 508.* Relevant para of the report is extracted hereunder:-

"13. The learned Tribunal, however, committed an error in opining that the insurance policy was not required to be proved. Learned Single Judge of the High Court, in our opinion, rightly held that the insurance policy having not brought on records, a presumption would arise that the liability of the insurer was unlimited……."

10. Thus, it cannot be said that the Appellant was entitled to lead secondary evidence to prove the carbon copy of the policy. True copy of the Insurance Policy produced is otherwise of no consequence as we are not even sure of its correctness, particularly, in view of the discrepancies in the policy number mentioned in the notice Ex.RW-1/2 and the true copy Ex.RW-1/5 produced during the inquiry before the Claims Tribunal.

11. Thus, the Appellant Insurance Company utterly failed to establish that its liability was limited.

12. The Appeal is without any merit; the same is accordingly dismissed.

13. The statutory deposit of ₹25,000/- be refunded to the Appellant.

14. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 28, 2012
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