NEW INDIA ASSURANCE CO. LTD.

v.

KIRAN SINGH AND ORS.

APRIL 28, 2004

[S.N. VARIAVA AND H.K. SEMA, JJ.]

A

B

Motor Vehicles Act, 1988—Motor accident—Death of passenger of young age—Extra premium paid by insured for covering risk of 40 passengers—Claim for compensation—Policy document produced by insurance company as well as the Bank—Grant of award relying on document placed by Bank as the same was proved as genuine—Award confirmed by High Court—In appeal, held: Compensation rightly awarded—Insurance-company is not capable to challenge the quantum of compensation—Company attempted to escape the liability by introducing copy of policy other than the insured.

C

D

Constitution of India, 1950—Article 136—Special Leave Petition—Jurisdiction under—Scope of—In concurrent finding of fact based on appreciation of evidence—Held: In such cases Court should not interfere.

An Assistant Engineer aged 27 years died in a bus accident. His wife filed petition claiming compensation. Appellant-Insurance Company filed the Policy with the Tribunal. The Bank also filed the carbon copy of the policy and the Bank Manager in his evidence stated that the policy document was the one which the Bank had received in token of the insurance of the vehicle through the appellant-company. Tribunal relying on the policy produced by the Bank using the multiplier of 43 granted compensation alongwith 12% interest. High Court maintained the award but reduced the rate of interest to 9%. Appellant-company as well as claimant preferred appeal to this Court.

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Appellant-company contended that the company was liable to pay compensation only to the extent of Rs. 30,000 per passenger as per the original policy produced by it before the Tribunal had the endorsement "I.M.T.13"; that the Courts below wrongly relied on the policy produced by the Bank Manager which did not have "I.M.T.13" endorsement; and that the multiplier of 43 was wrongly applied.

G

H

A Dismissing the appeals, the Court

HELD: 1. Both the courts below had concurrently held, based on evidence, that the copy of the so-called policy produced by the appellant in absence of proof thereof cannot be treated as a valid document and cannot be relied upon. Such concurrent findings of facts based on appreciation of evidence cannot B be termed as erroneous which would warrant interference in exercise of jurisdiction under Article 136 of the Constitution of India. Keeping in view the statement of the Bank Manager which proved that the carbon copy is indicia of the original copy of the policy, both the courts below were justified in accepting the copy of the policy produced by the Bank Manager as genuine C document. The Bank Manager being an independent and uninterested party, his evidence was rightly accepted by both the courts as reliable and creditworthy. It is noticed that the schedule attached to the policy indicates the excess payment of premium of Rs. 1290 for covering the risk of 40 passengers. On perusal of the policy, it is found that there is no such endorsement "I.M.T.13", as claimed by the appellant. There is no infirmity D in the findings recorded by both the courts below concurrently.

[798-E-H; 799-A-B]

2. The Tribunal while applying the 43 multiplier, had considered the age of the deceased being 27 years and if he had not died in the accident, he would have lived up to the age of 70 years and one day he would have been E promoted o the post of Chief Engineer. High Court was of the view, that if the multiplier is reduced and multiplicand is enhanced not much difference would be caused to the amount fixed by the Tribunal. Even otherwise it is a trite law that the insurance company is not capable to challenge the quantum of compensation. [799-C-E]

F

U.P. State Road Transport Corporation v. *Trilok Chandra,* [1996] 4 SCC 362, referred to.

3. Insurance is a covenant of good faith, where both parties are covenanted to abide by the terms and conditions of the policy. In the present G case, the company has made a deliberate attempt to escape the liability by introducing a copy of the policy other than the insured. Often, the terms and conditions are being respected more in breach than observance. Insurance company must bear in mind that they are the trustees of the public; keeper of the public coffer. Often, even genuine claims are being hotly contested in a routine manner by dragging the parties to courts, wasting enormous time H and money for the claimants to get their claims settled. The Act like Motor

Vehicles Act, 1988, being a beneficial legislation aimed at quick redressal of the victims of accidents arising out of the use of motor vehicles, the attitude routinely adopted by the insurance company would render the object of the Act frustrated. If such instances are brought to the court, the court would be obliged to dismiss the appeal with heavy costs, apart from deprecating such practices. [799-E-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5463 of 1996.

From the Judgment and Order dated 29.4.1998 of the Allahabad High Court in First Appeal from Order No. 955 of 1990.

WITH

Civil Appeal No. 3783 of 1999.

Pranab Kumar Mullick, Niraj Singh and K.K. Gupta (N.P) for the Appellant.

Naresh Kumar Sharma, Shrish Kumar Misra, Panab Kumar Mullic and Niraj Singh for the Respondents.

The Judgment of the Court was delivered by

H.K. SEMA, J. These two appeals arise from the same judgment and order and they are being disposed of by this common judgement. Civil Appeal No. 5463 of 1998 had been filed by the New India Assurance Co. Ltd. against the Award and Civil Appeal No. 3783 of 1999 had been filed by the claimants for the enhancement.

Briefly stated the facts are as follows :-

A young Assistant Engineer aged about 27 years had died in a motor accident on 10.1.1988 while travelling in a bus bearing registration no. URN 9428. The said bus was insured with the appellant-company. At the time of death the deceased was drawing a salary of Rs. 2384.50 p. The claim petition was filed by the wife of the deceased. The policy issued on 19.5.1987 was comprehensive and was valid till 18.5.1988. The Tribunal after considering the evidence and the insurance policy awarded a sum of Rs. 6,25,000 as compensation payable by the appellant-company along with 12% interest per annum upto date. On appeal, being filed by the appellant, the High Court after hearing both the parties at length maintained the Award granted by the Tribunal but reduced the rate of interest to 9% per annum instead of 12%.

A Aggrieved thereby the present appeal has been preferred by the Insurance Company.

Counsel for the appellant-company argued that the original policy issued by the appellant-company had an endorsement affixed to it by which "I.M.T 13" was incorporated as a term of the policy and, therefore, the premium paid B by the owner could fetch only to the tune of Rs. 30,000 as compensation per passenger. It is argued that the premium amount paid was Rs. 1290 covering the risk of 43 passengers and, therefore, the amount per passenger comes to Rs. 30 and as per the Indian Motor Tariff Rules the liability of the company is only to the extent of Rs. 30,000 per passenger. It is further argued that the C company had filed true copy of the policy before the Tribunal in which there is an endorsement "I.M.T.13", but both the Tribunal and the High Court have committed an error in placing reliance on the copy of the policy which was produced by the bank manager, in which there was no endorsement "I.M.T.13" as in the case of the copy of the policy produced by the appellant company.

D The above submission had been repelled by both the Tribunal and the High Court. Both the Courts below have concurrently held that the appellant had not led any evidence to prove that the policy document which was filed by the appellant along with the written statement, was genuine and the same was issued to the insured. There is no dispute that the appellant-company failed to lead any evidence to prove that the copy of the policy filed by the E company was genuine. Such concurrent findings of fact based on appreciation of evidence cannot be interfered with. There is a categorical finding by both the courts below that the so-called insurance policy filed by the appellant-company had not been proved, as no evidence was led by the company. Both the courts below have concurrently held, based on evidence, that the copy F of the so-called policy produced by the appellant in absence of proof thereof cannot be treated as a valid document and cannot be relied upon. Such concurrent findings of facts based on appreciation of evidence cannot be termed as erroneous, which would warrant our interference, in exercise of our jurisdiction under Article 136. Similarly, both the courts below have relied upon the carbon copy of the policy, which was handed over to the bank at G the time of insurance of the vehicle, produced by the bank manager. The bank manager was examined by the owner and in his statement he had categorically stated that the policy document was one which the bank had received in token of the insurance of the vehicle through the appellant-company. Keeping in view the statement of the bank manager which proved that the carbon copy H was indicia of the original copy of the policy, both the courts below were

justified in accepting the copy of the policy produced by the Bank Manager as genuine documents. In other words the copy of the policy produced by the Bank Manager has been proved as genuine. We are also of the view, that the Bank Manager being an independent and uninterested party, his evidence was rightly accepted by both the courts as reliable and creditworthy. It is noticed that the schedule attached to the policy indicates the excess payment of premium of Rs. 1290 for covering the risk of 40 passengers. It is also noticed that the liability of the appellant-company is unlimited. We have also perused the policy and we find that there is no such endosement "I.M.T.13", as claimed by the appellant. We do not see any infirmity in the findings recorded by both the courts below concurrently.

It is contended that the multiplier of 43 applied by the Tribunal is erroneous. In this connection, the learned counsel for the appellant had referred to the decision of this Court in *U.P. State Road Transport Corporation* v. *Trilok Chandra,* [1996] 4 SCC 362, wherein this Court has held that the multiplier should not be more than 18. The Tribunal while applying the 43 multiplier had considered the age of the deceased being 27 years and if he had not died in the accident, he would have lived up to the age of 70 years and one day he would have been promoted to the post of Chief Engineer. Keeping the aforesaid background in view, the High Court was of the view, that if the multiplier is reduced and multiplicand is enhanced not much difference would be caused to the amount fixed by the Tribunal. Even otherwise it is a trite law that the insurance company is not capable to challenge the quantum of compensation.

Insurance is a covenant of good faith, where both parties are covenanted to abide by the terms and conditions of the policy. In the premises aforesaid, it is clear that the company has made a deliberate attempt to escape the liability by introducing a copy of the policy other than the insured. Often, the terms and conditions are being respected more in breach than observance. Insurance company must bear in mind that they are the trustees of the public; keeper of the public coffer. Often, even genuine claims are *being hotly* contested in a routine manner by dragging the parties to courts, wasting enormous time and money for the claimants to get their claims settled. The Act like Motor Vehicles Act being a beneficial legislation aimed at quick redressal of the victims of accidents arising out of the use of motor vehicles, the attitude routinely adopted by the insurance company would render the object of the Act frustrated. If such instances are brought to the court, the court would be obliged to dismiss the appeal with heavy costs, apart from

A deprecating such practices.

CIVIL APPEAL NO. 3783 OF 1999

This appeal had been filed by the claimants for the enhancement of the compensation. On 13.4.2004 after the matter was fully argued by the counsel B for the insurance company, an adjournment was sought for on the ground that Advocate-on-record in this appeal was out of town. As the matter was connected with the appeal preferred by the insurance company, it was adjourned for one week for further hearing. On 20.4.2004 also, none appeared for the appellants to press this matter. Even otherwise on merit also we do C not find any infirmity in the orders of the courts below which would warrant our interference.

In the result both the appeals are dismissed. C.A. No. 5463 of 1998, preferred by the Insurance Company, is dismissed with costs.

K.K.T. Appeals dismissed.