

SUPREME COURT OF INDIA

National Insurance Co. Ltd., Jodhpur

Vs.

Bhagu Devi

(V.N. Khare and S.N. Phukan JJ.)

25.04.2000

ORDER

1. Two pillion riders, namely, Om Prakash and Kewa Ram died as a result of an accident with the tractor bearing No. RJN - 2114 on April 15, 1990. The case of the Appellant is that the aforesaid tractor was not insured with the Appellant at the time of accident. It is alleged that after the accident took place, owner of the tractor with the connivance of certain officers of the Appellant fraudulently got issued a back dated cover note. Subsequently when the said fraud came to the notice of the officials of the Appellant, the Appellant cancelled the said insurance cover note and informed the Regional Transport Officer also. The heirs of the deceased as well as the injured filed claim petitions before the Motor Accident Claims Tribunal claiming compensation. In the said claim petitions the Appellant along with owner of the tractor were impleaded as Respondents. The Appellant filed a written statement wherein it denied its liability for payment of compensation to the claimants. The Appellant stated therein that the insurance cover note dated 13th April, 1990 was fraudulently got issued with the connivance of certain employees of the Company. On this plea issue No. 3 was framed which runs as under:

Whether the owner of the vehicle has obtained insurance of tractor No. RJN-2114 and trolley No. RJN-2170 fraudulently due to which non-applicant No. 6 does not owe any liability to pay damages?

2. The Tribunal while allowing the claim petitions decided issue No. 3 against the Appellant. The Appellant thereafter preferred a statutory appeal before the High Court. Since there was a delay of 47 days in filing the appeal, an application for condonation of delay along with an affidavit was filed. The learned Single Judge of the High Court was of the view that the delay has not been satisfactorily explained and, therefore, the delay cannot be condoned. Incidentally the learned Single Judge also touched certain aspects of the case on merits. However, so far as issue No. 3 was concerned it was not considered. The appeal was consequently dismissed. The Appellant thereafter preferred an LPA before a Division Bench of the High Court. The Division Bench agreed with the view taken by the Single Judge. Consequently, the Letters Patent Appeal was also dismissed. It is against the said Judgement the Appellant is in appeal before us. At the time when the Special Leave Petition was entertained following order was passed:

Issue notice to Respondent nos. 9-15 only. No notice need be sent to other Respondents who are the claimants in whose favour the award was made by the Motor Accident Claims Tribunal. We direct the petitioner to deposit the awarded sum within six weeks with the Tribunal. The claimants can

withdraw the said sum after it is deposited. We make it clear that such deposit will be without prejudice to the right of the Insurance Company to establish their contentions in this Court. If they succeed, the Insurance Company will be permitted to realise the award amount from the purported insured.

3. Shri Parmanand Gaur, learned Counsel appearing for the Appellant stated that in pursuance of the order of the Court the Appellant had deposited the entire decretal amount. Therefore, the interest of the claimants has already been safeguarded by the aforesaid order passed by this Court.

4. We have looked into the explanation given by the Appellant for condonation of delay in filing the appeal before the High Court. We find that the cause shown by the Appellant in filing the appeal was sufficient and delay ought to have been condoned by the High Court and further the High Court touched upon the merits of the matter without considering issue No. 3. We, therefore, condone the delay in filing the appeal and set aside the judgments under appeal and send the case back to the learned Single Judge of the High Court to decide issue No. 3. On remand no notice shall be issued to the claimants. The claimants shall appropriate the amount deposited by the Appellant. In case Appellant is successful in appeal, the Appellant shall realise the decretal amount from the insured. All appeals are allowed. No costs.