

SUPREME COURT OF INDIA

M.V. Subramanya

Vs.

New India Assurance Co. Ltd.

(S.N. Variava and H.K. Sema JJ.)

03.09.2003

JUDGMENT

S.N. Variava and H.K. Sema, JJ.

1. This appeal is against an order passed by the High Court of Karnataka dismissing the review petition.

2. Briefly stated the facts are:

“On 6.11.1986 an accident took place. The claimants filed a claim before the Motor Accidents Claims Tribunal. The insurance company disputed the claim, inter alia, on the ground that the vehicle was not insured and the driver has no valid licence. During evidence, a copy of the insurance policy was marked as Exh. R-1 by consent of the parties. The appellant (herein) also consented to that copy being so marked. The Tribunal, therefore, held that the vehicle was insured and passed an award against the insurance company. The insurance company filed an appeal, inter alia, on the ground that as per the terms of the policy, the liability is limited to Rs. 50,000. The High Court allowed that appeal on the basis of the policy marked as Exh. R-1. The Special Leave Petition, filed against the order of the High Court, was dismissed by this court.”

3. Thereafter, appellant filed a review before the High Court. They produced some other policy which did not contain the clause restricting liability. The High Court has correctly dismissed the review petition. The High Court has correctly held that there was no fraud because the policy which was before the court at all stages was the one which had been marked as Exh. R-1. The High Court has also held that the liability was limited on the basis of the premium which had been paid. Hence this appeal.

4. We see absolutely no substance in this appeal. If a party has in its custody or possession a document which is relevant, it is the duty of that party to produce the document at the very first stage. Appellant could not deny that the policy was always with him. There was nothing which prevented him from producing it before the Tribunal. Had he produced a policy which was different from the one produced by the insurance company, the Tribunal could have

ascertained on evidence which was the correct policy. The appellant consented to the copy being produced by the insurance company being marked as an exhibit. Further there is absolutely no explanation, why, when the insurance company sought to limit its liability in appeal, this policy was not produced. Producing this policy for the first time in the review petition cannot be ground to review the earlier order. In our view, the High Court rightly refused to look into this policy.

5. In our view, the High Court has correctly rejected the review petition. This appeal stands dismissed along with costs of Rs. 5,000 to be paid to the insurance company.