
(2019) 07 BOM CK 0033
In the Bombay High Court
Case No : First Appeal (Fa) No. 388 Of 2013

Branch Manager, National Insurance Co. Ltd	APPELLANT
Vs	
Roshan Govardhan Lokhande And Ors	RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149

Citation : (2019) 07 BOM CK 0033

Hon'ble Judges : M.G. Giratkar, J

Bench : Single Bench

Advocate : D.N. Kukday, Monali Pathade

Final Decision : Allowed

Judgement

1. The present appeal is against the judgment of Motor Accident Claims Tribunal, Wardha in Claim Petition No. 169 of 2008 dated 22nd November, 2012.
2. The brief facts, which give rise to filing of the present appeal, are that, on 12th August, 2008, when the petitioner was proceeding on his bicycle, the offending truck bearing Registration No. MTGÂ9998 driven by its driver rashly and negligently, gave dash to bicycle. The petitioner sustained fracture to his right leg. He was admitted in Kasturba Hospital from 12.08.2008 to 29.08.2008. He has undergone operation and incurred medical expenses. A report was lodged. The truck driver was prosecuted by the police. The truck was owned by respondent No.1 and insured by respondent No.2 (in original petition).
3. Injured filed claim petition for grant of compensation. The appellant (original respondent No.2) appeared and filed Written Statement at Exh.14.

Specific defence was raised by the appellant stating that the owner of vehicle namely Manohar Gilorkar, resident of Sant Tukdoji Ward, Hinganghat

had issued Cheque No. 384105 dated 14th July, 2008 for Rs.14,378/- in favour of the appellant/Insurance Company towards insurance premium. The

appellant had presented the said cheque. The said cheque was returned back on 24th July, 2008 with an endorsement "funds insufficient".

Thereafter the appellant informed to the owner of truck namely Manohar Gilorkar by letter dated 05th August, 2008 about the dishonour of cheque

and also informed that the policy in question is cancelled and the appellant is not liable for any risk in respect of vehicle covered thereunder. The

owner was also informed that if he wants to take fresh insurance in that case the premium amount as required to be paid either in cash or by demand

draft. The appellant also sent a registered letter in this regard by Registered Post A/D and copy thereof to the Assistant Regional Transport Officer

(ARTO) at Wardha. ARTO, Wardha received registered letter. An outward entry of the said registered letter is maintained by the appellant in its

despatch register.

4. The defence of the appellant is that the Insurance Company did not receive the amount from the owner of the Truck. Therefore, not liable to pay

any compensation. Issues were framed. Claimant Govardhan adduced his evidence on behalf of his injured son Roshan. The appellant (respondent

No.2) examined Gitamani who was working as an Administrative Officer in Butibori branch of National Insurance Company. After hearing both the

sides, learned MACT, Wardha allowed the claim petition and directed respondent Nos.1 and 2 i.e. owner and Insurance Company to pay jointly and

severally the amount of compensation of Rs.35,500/- inclusive of No Fault Liability along with interest at the rate of 7.5 per cent per annum from the

date of petition till the realization of amount.

5. Heard Shri D.N. Kukday, learned Counsel appearing on behalf of the appellant and Ms. Monali Pathade, learned Counsel appearing on behalf of

respondent No.1. None appears on behalf of respondent No.2.

6. Shri Kukday, learned Counsel for the appellant has submitted that the insurance company has adduced the evidence of Gitamani. Material

documents are also placed on record. The owner of the truck had issued cheque of Rs.14,378/- for the insurance of offending truck. The said cheque

(Exh.47) was returned back with an endorsement â??funds insufficientâ?. The said information was received by the Insurance Company on 24th

July, 2008. Copy of endorsement of bank is filed on record. Thereafter, on 05th August, 2008, owner of the truck namely Manohar Gilorkar was

informed that the cheque was dishonoured and, therefore, policy in question is cancelled. Copy of letter is at Exh.48. Vehicle owner Manohar Gilorkar

received the said letter. Copy of acknowledgment is at Exh.49. Copy of despatch register of National Insurance Company/appellant is filed on record

along with copy of acknowledgment which shows that information was given to ARTO, Wardha on 07th August, 2008.

7. Shri Kukday, learned Counsel for the appellant has further submitted that the appellant/Insurance Company has not received any amount from the

owner of the offending vehicle towards premium of insurance policy, therefore, insurance company is not liable to pay compensation. In support of his

submission has placed heavy reliance on the judgments in the cases of Daddappa and others .v. National Insurance Co. Ltd. (reported in I (2008)

ACC 1 (SC)); National Insurance Co. Ltd. .v. Yellamma and another (reported in IV (2008) ACC 774 (SC)); and United India Insurance Co. Ltd. .v.

Laxmamma and others (reported in IV (2012) ACC 801 (SC).) Shri Kukday has submitted that once the cheque is dishonoured, Insurance Company

is not liable to pay compensation. He has further submitted that as per the provisions of Sections 147 and 149, the appellant has informed the owner of

the offending truck and also the ARTO, Wardha. Therefore, the appellant is not liable to pay any compensation.

8. Ms. Monali Pathade, learned Counsel for respondent No.1 has submitted that there is no dispute about the accident. There is no dispute that the

appellant insured the said truck and issued insurance policy. Therefore, third party/injured is protected. In support of her submission, she has heavily

placed reliance on the judgments in the cases of New India Assurance Co. Ltd. .v. Rula and others (reported in 2000 ACJ 630;) Oriental Insurance

Co. Ltd. .v. Prakash Chunilal Mirgany and others (reported in 2005(1) AJR, 182); and Oriental Insurance Co. Ltd. .v. Gitabai and others (reported in

2014 ACJ, 1423).

9. Proposition laid down in the case of New India Assurance Co. Ltd. .v. Rula and others (cited supra) is that, â??Policy was issued on 08.11.1991

and cheque towards premium was dishonoured on 16.11.1991. Vehicle met with accident during midnight on 08.11.1991 resulting in death of three persons. Insurance Company contended that policy represents a contract between insurer and insured for consideration of premium and if premium is not paid, the contract would not be valid as there cannot be any contract without consideration. Contract of insurance under Chapter XI of Motor Vehicles Act contemplates a third party who is not a party to the contract but is protected by it. Whether insurance company is exempted from third party liability if the cheque towards premium is dishonoured and policy is cancelled after accrual of liability. Payment of premium is not the concern of third party; subsequent cancellation of policy due to dishonour of cheque would not affect the rights of a third party which had accrued on the date of accident.

10. In the case of Oriental Insurance Co. Ltd. .v. Prakash Chunilal Mirgany and others (cited supra), this Court has held that, once the cheque is received and the same is dishonoured, then it was for the Insurance Company to inform the owner of the vehicle and also to the RTO. If the RTO is not informed then Insurance Company is liable to pay the amount of compensation. The same ratio is laid down in the case of Oriental Insurance Co. Ltd. .v. Gitabai and others (cited supra).

11. In the recent judgment of Hon'ble Apex Court in the case of United India Insurance Co. Ltd. .v. Laxmamma and others (cited supra), it is held that, cheque given by owner of vehicle towards premium gets dishonoured, Insurance policy cancelled subsequent to accident. Cancellation of policy having been done by insurer after accident, insurer became liable to satisfy award of compensation passed in favour of claimants. It is further held that, where policy of insurance is issued by authorised insurer, on receipt of cheque towards payment of premium and such cheque is returned dishonoured, liability of authorised insurer to indemnify third parties in respect of liability which that policy covered subsists and it has to satisfy award unless policy is cancelled by authorised insurer and intimation of such cancellation reached insured before accident. (emphasis supplied).

12. In the case of Daddappa and others .v. National Insurance Co. Ltd. (cited supra), it is held that, Payment by cheque, however, is subject to encashment. Third party would be entitled to avail benefit of insurance policy if

same is subsisting on date of accident. If contract of insurance has been cancelled and all concerned intimated thereof, Insurance Company would not be liable to satisfy claimâ??.

13. In the case of National Insurance Co. Ltd. .v. Yellamma and another (cited supra), it is held that, â??Contract of insurance like any other contract, is contract between insured and insurer. Amount of premium is required to be paid as consideration for arriving at concluded contract. If insurer insists that cheque should be issued only by insured and not by third party no exception thereto can be taken. â? Payment by cheque is ordinarily accepted as valid tender but same would be subject to its encashment. If the cheque is returned back without encashment and all concerned had been intimated thereof, Insurance Company would not be liable to satisfy the claim. Sections 147 and 149 of the Motor Vehicles Act not applicable.â??

14. In the present case, respondent No.2, owner of the vehicle issued a cheque in favour of appellant for Rs.14,378/â on 14.07.2008. Copy of cheque is at Exh.47. The cheque was presented to Bank of India. The same was dishonoured for insufficient funds on 24th July, 2008. On 05th August, 2008, respondent No.2/owner of vehicle was informed vide letter Exh.48 that due to non receipt of premium, policy was cancelled. He was also informed that in case he wants to take a fresh insurance, please remit immediately the premium in cash/ demand draft. Respondent No.2 received the said letter vide acknowledgment (Exh.49). The appellant has also informed to the ARTO, Wardha on 07th August, 2008 about the cancellation of policy due to dishonour of cheque. Copy of despatch register and copy of acknowledgment are also placed on record.

15. There is no dispute that the accident took place on 12th August, 2008. On that day, policy of offending truck was already cancelled by the appellant. Necessary formalities were also completed by the appellant by informing the insured by letter dated 05th August, 2008 and also informed ARTO on 07th August, 2008. In view of decisions of Hon'ble Apex Court in the cases of United India Insurance Co. Ltd. .v. Laxmamma and others; National Insurance Co. Ltd. .v. Yellamma and another; and Daddappa and others .v. National Insurance Co. Ltd. (cited supra), the appellant/Insurance Company is not liable to pay the amount of compensation to

the injured/respondent No.1.

16. Thus decision cited by the side of respondent No.1/ injured in the case of New India Assurance Co. Ltd. .v. Rula and others (cited supra) is not

applicable in view of the aforesaid decisions of Hon'ble Apex Court. The decision in the case of Oriental Insurance Co. Ltd. .v. Prakash Chunilal

Mirgany and others (cited supra) is in compliance of Sections 147 and 149 of the Motor Vehicles Act. It appears from the record that the Insurance

Company/appellant has complied Sections 147 and 149 of the Motor Vehicles Act. The appellant has received information from the bank on 24th July,

2008 that the cheque returned back with an endorsement, â??insufficient fundsâ?. On 05th August, 2008, letter was sent to the owner of

truck/insured. On 07th August, 2008, information was given to ARTO, Wardha. The accident took place on 12th August, 2008. On the date of

accident, the insurance policy of the offending vehicle was already cancelled and, therefore, insurance company is not liable to pay amount of

compensation. Hence, the direction to the insurance company to pay jointly and severally amount of compensation of Rs.35,500/Â is liable to be

quashed and set aside.

There is no dispute about the accident and quantum of maintenance.

Hence, the following order.

In the result, the appeal is allowed as prayed. Impugned judgment in Claim Petition No. 169 of 2008 dated 22nd November, 2012 insofar as it relates

to the appellant/insurance company is hereby quashed and set aside. The claim petition stands dismissed against the appellant/respondent

No.2/insurance company. The claimant shall recover the amount of compensation from the owner of offending travel bus/respondent No.1. Rest of

the impugned judgment is maintained.

Shri D.N. Kukday, learned Counsel for the applicant/insurance company submits that entire decretal amount is deposited before this Court. In view

of the order passed in favour of the appellant, entire amount deposited by the appellant be refunded.