(2019) 07 BOM CK 0034

In the Bombay High Court

Case No : First Appeal (Fa) No. 466 Of 2012

Branch Manager, National Insurance Co. Ltd. Through the Regional Manager — APPELLANT

Vs

Suman And Ors — RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 147
Constitution Of India, 1950 — Article 142

Citation : (2019) 07 BOM CK 0034

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

Bench : Single Bench

Advocate : D.N. Kukday, Monali Pathade

Final Decision : Allowed

Judgement

1. This is an appeal filed by the appellant/Insurance Company challenging the judgment and award dated 24th December, 2019 passed by the

Member, Motor Accident Claims TribunalÂ3, Nagpur in MACP No. 501 of 2000, thereby directing the appellant to first pay the awarded money and

then recover the same from the owner of the offending travel bus.

2. On 18th May, 2000, deceased Laxman Kadve was driving his jeep bearing registration No. MHÂ31/GÂ4638. When he reached near Thanegaon

area on National Highway No.6, a travel bus bearing registration No. MHÂ31/WÂ8843 came in high speed, rash and negligently and gave dash to the

jeep of deceased. Deceased sustained injuries and died in the accident. Crime No. 52/00 came to be registered against the driver of travel bus at

Police Station, Karanja. Legal heirs of deceased filed Claim Petition No. 501 of 2000 before MACT, Nagpur. The appellant appeared and filed written statement at Exh.25 and denied the claim on the ground that respondent No.1/ owner of offending bus had issued Cheque No. 016442 dated 04th

January, 2000 for the premium of insurance policy. The said cheque was returned unpaid with endorsement by the bank â??not arranged forâ?.

Therefore, policy issued by respondent No.2 (in original petition)/ appellant/ insurance company was cancelled on 11th January, 2000. After

cancellation of the policy, the said fact was informed to respondent No.1/owner. Respondent No.1 has not taken any further steps. On the date of

accident, offending travel bus was not insured with the appellant/insurance company. Therefore, insurance company is not liable to pay the amount of

compensation.

3. After framing the issues, respondent Nos.1 and 2 adduced their respective evidence. Insurance Company examined the Manager Shri Thool in

sister case in respect of same accident.

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

respondent Nos.1 to 6.

5. Shri Kukday, learned Counsel for the applicant has submitted that on the date of accident, the appellant had not insured the offending bus and,

therefore, insurance company is not liable to pay the amount of compensation. In support of his contention, he placed heavy reliance on the judgments

of Hon'ble Apex Court in the cases of United India Insurance Co. Ltd. .v. Laxmamma and others (reported in IV (2012) ACC 801 (SC))and

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

6. Ms. Pathade, learned Counsel for the respondents has also relied on the judgment of Hon'ble Apex Court in the case of National Insurance Co.

Ltd. .v. Yellamma and another (reported in IV (2008) ACC 774 (SC)).

7. There is no dispute that on the date of accident, offending bus was owned by respondent No.7/Dilip Singh Chawla (original respondent No.1).

Learned Tribunal directed the insurance company/ appellant to first pay the awarded amount and recover the same from the owner/respondent No.7.

8. Such type of order can be passed if there is any policy in existence at the time of accident. In the present case, respondent No.7Â owner has

admitted in his evidence that he was informed by the appellant about the cancellation of policy. Thereafter, he had issued notice etc. But, nothing in on

record to show that such notices were received by the appellant. Admission of owner of offending bus shows that the cheque which was issued by

him towards the payment of premium of insurance policy, was dishonoured. Policy was cancelled and it was informed to him by the appellant.

Admission of appellant shows that the cheque was given towards premium. The said cheque was of Rs.23,030/Â for the insurance of two buses. The

said cheque was returned back on 08th January, 2000 by the bank with an endorsement â??not arranged forâ?. Thereafter the appellant had

cancelled the policy of offending bus and accordingly informed the owner of bus on 10th January, 2000.

9. Accident took place on 18th May, 2000. Therefore, it is clear that at the time of accident, offending bus was not insured with the appellant and it is

also observed by the Tribunal in para 11 of the judgment. Therefore, it is directed to the insurance company to pay first and recover the same from the

owner of the offending bus. The liability of insurance company to pay first does not arise as there was no insurance policy issued by the appellant on

the day of accident. The appellant as well as respondents both relied on the judgment of National Insurance Co. Ltd. .v. Yellamma and another (cited

supra). Hon'ble Apex Court has held that, â??the Tribunal found no valid insurance policy on the date of accident and excluded the insurance

company from liability of paymentâ?. It is further held that, â??the High Court has wrongly proceeded on the premise that a cheque could be issued

by a third party. A contract of insurance like any other contract, is a contract between the insured and the insurer. The amount of premium is required

to be paid as a consideration for arriving at a concluded contract. If the insurer insists that a cheque should be issued only by the insured and not by a

third party, no exception thereto can be taken. Question of purported contract of insurance while taking recourse to Section 147 of the Motor Vehicles

Act does not ariseâ??

10. In the said judgment, Honble Apex Court, in exercise of jurisdiction under Article 142 of the Constitution of India, directed the insurance company

to pay the amount of compensation and thereafter recover the same.

11. In the case of United India Insurance Co. Ltd. .v. Laxmamma and others (cited supra), the Apex Court has held that, â??Premium cheque was

dishonoured, liability of insurer, 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 accidentâ?. (emphasis

supplied).

12. In the present case, the appellant/insurance company, due to non payment of premium by the owner of offending bus, cancelled the policy on 10th

January, 2000 and informed the owner of bus about the same. Accident took place on 18th May, 2000. Therefore, it is clear that on the date of

accident, there was no insurance of offending bus by the appellant. Therefore, the appellant/insurance company cannot be directed to pay amount of

compensation and then recover. Hence, the following order.

In the result, the appeal is allowed as prayed. Impugned judgment in Claim Petition No. 501 of 2000 dated 24th December, 2010 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 claimants 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 decreetal 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.

