(2011) 07 CHH CK 0037

In the Chhattisgarh High Court

Case No : M.A. (C) No. 216 of 2011

Branch Manager, New India Insurance Co. Ltd. APPELLANT

Vs

Smt. Kajal and Others RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Motor Vehicles Act, 1988 — Section 147(5), 149(1), 166
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2011) 4 MPJR 75

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Pankaj Agrawal,/insurance company, for the Appellant; Suryakant Mishra, Advocate for respondents No. 1 to 4 and Mr. Abhinav Kardekar, Advocate for respondents No. 6, for the Respondent

Judgement

G. Minhajuddin, J.—This appeal has been filed by the appellant--The New India Assurance Company Ltd. against the award dated 16th December, 2010 passed by 9th Additional Motor Accident Claims Tribunal (FTC), Durg (in short "the Tribunal") in Claim Case No.62/08 whereby and whereunder the liability to pay compensation amount has been fastened on the appellant, along with owner and driver of the vehicle, jointly and severally. Facts in brief are that on 7.6.2008 at about 1.45 pm deceased Suresh Kumar Balani along with his wife i.e. respondent No.1/claimant was going on his TVS motorcycle by service road from Bhilai to Raipur. When they reached near Dashmesh Dhaba, respondent No.5 driver of the offending Truck Tanker No. CG 07C 3975 while reversing the vehicle rashly and negligently, dashed against the TVS motorcycle, which was being driven by the deceased, as a result of which the deceased and his wife respondent No.1/ claimant sustained grievous injuries and on way to Sector-9 Hospital, Bhilai, the deceased succumbed to his injuries. The offending vehicle was owned by respondent No.6 and insured with the appellant/insurance company on the date of accident. Immediately thereafter, an FIR was lodged at Police Station:

Kumhari, on the basis of which, Crime No. 153/08 for the offences under Sections 279,337 and 304A of the Indian Penal Code were registered and after investigation, charge sheet was filed u/s 173 of the Code of Criminal Procedure before the Judicial Magistrate First Class, Durg.

2. Heard learned counsel for the respective parties, perused the record as also the impugned award.

3. The deceased was earning Rs.8,500/- per month by working as a salesman and he was the only bread earner of his family. Respondents No. 1 to 4 were totally dependent on the deceased. With the aforesaid averments, a claim petition was filed u/s 166 of the Motor Vehicles Act, 1988 before the Tribunal.

4. After giving opportunity of hearing to the parties, the Tribunal passed the impugned award dated 16th December, 2010 in favour of respondents No.1 to 4, saddling the liability, jointly and severally, on the appellant/ insurance company as well as on the driver and the owner of the offending Truck Tanker i.e. respondents No. 5 & 6 respectively.

5. It is not in dispute that after receiving a cheque of Rs.44,536 /- dated 18th February, 2008 towards the premium in respect of Truck Tanker No. CG 07C 3975, owned by respondent No.6 Naresh Kumar Mathur, and Truck Tanker No. CG 07C 3976, owned by wife of respondent No.6 i.e. Smt. Sanu Mathur, the appellant/insurance company had issued two policies for the period from 19.2.2008 to 18.2.2009.

6. The main thrust of the argument of the appellant/insurance company is that Cheque No. 640965 dated 18.2.2008 for Rs.44,536/-, which was received towards premium of two truck Tankers, on being presented for collection, was dishonoured and returned with a memo that the said cheque has been dishonoured on account of "insufficient funds". According to learned counsel for the appellant, immediately thereafter both the policies of the aforesaid Trucks were cancelled and written intimation in this regard was sent to the insured i.e. respondent No. 6 Naresh Kumar Mathur and his wife Smt. Sanu Mathur as well as to the concerned Regional Transport Officer. As per learned counsel for the appellant as the policies were cancelled from the date of issuance i.e. 19.2.2008, much prior to the date of accident i.e. 7.6.2008, the appellant/insurance company is not liable to indemnify the owner /respondent No.6 Naresh Kumar Mathur against 3rd party risk.

7. Learned counsel for respondents No. 1 to 4 and respondent No. 6 have supported the impugned award and contended that once the policy has been issued by the appellant /insurance company, then by subsequent cancellation of the policy, the appellant cannot be absolved of its liability in respect of 3rd party risk in view of Section 147(5) and Section 149(1) of the Motor Vehicles Act, 1988 (in short "the Act, 1988") and the Tribunal has rightly fastened the liability to pay compensation on the appellant/insurance company. They have also contended that no intimation regarding cancellation of insurance policy in respect of Truck

Tanker No. CG 07C 3975 on account of bouncing of cheque was given to owner/ respondent No.6 Naresh Kumar Mathur.

8. The core question for consideration is -- whether information regarding dishonour of cheque No. 640965 dated 18.2.2008 for Rs.44,536/-and consequential cancellation of the policies from the date of their issuance i.e. 19.2.2008, was given to owner/respondent No.6 Naresh Kumar Mathur by the appellant/insurance company?

9. It is not in dispute that a single cheque No. 640965 dated 18.2.2008 for a sum of Rs.44,536/- was given by respondent No.6 Naresh Kumar Mathur on behalf of his Company--Sanjay Kumar Transport--towards payment of policy premium of Truck Tanker No. CG 07C 3975, owned by respondent No.6, and Truck Tanker No. CG 07C 3976, owned by his wife Smt. Sanu Mathur. As per statement of Branch Manager of the appellant/insurance company namely Narendra Kumar Vig (NAW-3), the cheque given by respondent No.6 on 18.2.2008 was sent for collection on 19.2.2008 and was returned on 12.3.2008 with information from the bank that the said cheque has been dishonoured on account of insufficient funds in the account of respondent No.6. The fact of dishonouring of the said cheque has not been disputed by respondent No.6. The Branch Manager Narendra Kumar Vig (NAW-3) has further stated that immediately after receiving intimation from the bank regarding dishonouring of the cheque, on 13.3.2008 intimation in this regard and regarding consequential cancellation of both the policies issued in respect of aforesaid Truck Tankers, was sent, which was addressed to Smt. Sanu Mathur and the concerned RTO, Durg. He has also stated that both the written information regarding dishonouring of the cheque and consequential cancellation of the policies addressed to respondent No. 6 and his wife Smt. Sanu Mathur, were sent in a single envelope addressed to Smt. Sanu Mathur, on address as was mentioned in proposal form.

10. From perusal of the material on record, it is abundantly clear that postal addresses of both respondent No.6 Naresh Kumar Mathur and his wife Smt. Sanu Mathur are the same. A joint cheque towards the payment of premium amount in respect of both the Truck Tankers was signed and given by respondent No.6 to the appellant/insurance company. It is not the case of respondent No.6 that he and his wife Smt. Sanu Mathur are living separately and they are not on talking terms. This fact is further fortified by the fact that towards payment of premium amount in respect of Truck Tanker No. CG 07C 3976, owned by wife of respondent No.6 Smt. Sanu Mathur, the cheque was issued by respondent No.6.

It is pertinent to mention that on 13.3.2008, both the information regarding dishonouring of cheque No. 640965 dated 18.2.2008 and consequential cancellation of the policies, were sent by the appellant/insurance company to respondent No.6 and his wife Smt. Sanu Mathur in one envelope by registered AD, addressed to Smt. Sanu Mathur. During cross-examination of the Branch Manager of the appellant/insurance company Narendra Kumar Vig (NAW-3), it has been suggested in para-6 that both the information were sent to respondent

No. 6 and his wife regarding dishonouring of the cheque on the address of Smt. Sanu Mathur, wife of respondent No.6, to which he has replied in affirmative.

11. Furthermore, respondent No.6 Naresh Kumar Mathur has admitted that he used to get information regarding status of his bank account through his supervisor. The account of respondent No.6, against which the cheque in question was drawn, was never debited for the cheque amount, and as such, this fact was well within the knowledge of respondent No.6 that the said cheque could not be honoured. In addition to this, it has specifically been mentioned in the policy that in case of dishonour of the premium cheque, the policy stands automatically cancelled ab initio. Towards the payment of premium amount in respect of Truck Tanker No. CG 07C 3976, which is owned by his wife Smt. Sanu Mathur, cheque was not issued by Smt. Sanu Mathur, but a joint cheque towards premium of both the Truck Tankers was issued by respondent No.6 Naresh Kumar Mathur. Service of information regarding dishonouring of cheque and consequential cancellation of the policies on Smt. Sanu Mathur has not been disputed. The cheque in question was not issued by Smt. Sanu Mathur. In such circumstances, there was every reason for Smt. Sanu Mathur to enquire from her husband respondent No. 6 regarding receipt of information about dishonouring of cheque and cancellation of both the insurance policies. Had Smt. Mathur not received the aforesaid information, there was no occasion for her to have paid the premium amount on 20.3.2008 in cash towards policy premium of Truck Tanker No. CG 07C 3976, owned by her.

12. In view of above mentioned facts and circumstances of the case, it is crystal clear that information dated 13.3.2008 regarding dishonouring of cheque and consequential cancellation of both the policies was received also by respondent No. 6 Naresh Kumar Mathur and even after that, he did not make any effort to get the Truck Tanker No. CG 07C 3975, owned by him, insured by paying premium amount. After receipt of information from the bank on 12.3.2008, the appellant/insurance company, without any delay, on 13.3.2008 informed respondent No. 6 Naresh Kumar Mathur, his wife Smt. Sanu Mathur as well as the concerned RTO, Durg regarding dishonouring of cheque and consequential cancellation of both the policies, therefore, the appellant/insurance company is not liable to indemnify the owner of offending vehicle Truck Tanker No. CG 07C 3975 against 3rd party risk.

13. In the result, the appeal is allowed. Impugned award dated 16th December, 2010, so far as it relates to fastening of liability for payment of compensation on the appellant/insurance company, is set aside and the appellant/insurance company is exonerated from its liability of satisfying the impugned award. Consequently, owner of the offending vehicle i.e. Truck Tanker No. CC 07C 3975 respondent No.6 Naresh Kumar Mathur and driver respondent No.5 Sunil Kumar Pandey, are held, jointly and severally, liable to pay the amount of compensation to the claimants.

14. However, it is made clear that if any amount of compensation has been

deposited by the appellant/insurance company and not disbursed to the claimants, then the appellant/insurance company shall be entitled to withdraw it. In case, the amount has been disbursed to the claimants, then the appellant/ insurance company shall have the right to recover the same from respondent No.6- owner of the offending vehicle.

15. No order as to costs. Certified copy as per rules.