

(1997) 09 OHC CK 0039

In the Orissa High Court

Case No : Miscellaneous Appeal No. 533 of 1995

Brundaban Patra

APPELLANT

Vs

The New India Assurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 30-09-1997

Acts Referred:

Insurance Act, 1938 — Section 64VB

Motor Vehicles Act, 1988 — Section 145, 147, 149

Citation : (1997) 2 OLR 538

Hon'ble Judges : Pradipta Ray, J

Bench : Single Bench

Advocate : H.P. Rath, for the Appellant; M. Sinha, for the Respondent

Judgement

Pradipta Ray, J.—In pursuance of order dated April 30, 1997, Mr. M. Sinha, learned Advocate appeared on behalf of the Respondent No. 1 at the stage of Admission. Heard Mr. Rath for the appellant and Mr. Sinha for Respondent No. 1.

Appellant filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 before the 2nd Motor Accident Claims Tribunal (S.D.), Berhampur and the same was registered as MAC No. 305/91 and renumbered as MAC No. 185/92. Appellant alleged that while he was getting down from the bus, the driver suddenly started the bus, he fell down and suffered injuries on his right hand. He claimed a compensation of Rs. 25,000/- from the respondents.

2. The owner Atanu Kumar Behera, respondent No. 2 herein, did not contest the claim. The New India Assurance Company, the insurer, contested the claim and denied its liability on the ground that the vehicle was not covered by a valid insurance and the driver did not have any valid driving licence on the date of accident.

3. The Tribunal found that the petitioner suffered injuries in the accident which was caused by negligence of the driver and awarded a compensation of Rs. 10,000/- with interest at the rate of 9% per annum from the date of application

till realisation. The Tribunal, however, found that there was no valid insurance policy and directed the owner to pay the awarded compensation. Against said judgment and award claimant has filed this appeal.

4. It is necessary to note a few material dates for determining the questions raised in this appeal. Accident took place on April 22, 1991. On June 27, 1990 the owner of the vehicle approached the insurer for insurance coverage and obtained a policy from the insurer by giving a cheque dated June 27, 1990 to pay the required premium. Said cheque was dishonoured by the owner's banker Indian Overseas Bank, Berhampur and as such there was no payment of premium. By letter dated July 13, 1990 the Insurance Company intimated said fact to the owner with a copy to Regional Transport Officer, Chhatrapur. By the said letter Insurance Company also intimated the owner that all documents, receipts issued by the Insurance Company had already been declared as cancelled for all purposes and asked him to return those documents.

5. Mr. H.P. Rath, appearing for the appellant has urged that the Insurance Company having once issued the Cover Note, the Insurance Company was liable to satisfy judgments and awards against the insured persons in respect of third party risk as provided in Section 149 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"). He has referred to Section 149 of the Act to urge that the Insurance Company's liability is irrespective of the fact that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy Mr. Rath has also submitted that the award of Rs. 10,000/- is unreasonably low and even lower than no-fault liability.

6. Mr. Sinha appearing for the Insurance Company has contended that the Cover Note or the Certificate of Insurance, if any, was void because of material suppression inasmuch as the owner issued a cheque knowingly although he had no money in the account and obtained the Cover Note. Mr. Sinha has referred to Section 64VB of the Insurance Act, 1938 and submitted that the Insurance Company cannot be said to have assumed any risk Unless premium is received in advance. According to him, the Insurance Company not having received the premium due to dishonour of cheque it did not assume any risk at all.

7. From the various provisions of the Act a scheme for insurance coverage of motor vehicles emerges. It appears that initially a Cover Note may be issued by the Insurance Company. Cover Note is a provisional acceptance of the risk by the Insurance Company subject to compliance with other requirements, if any, and further verifications, if necessary. The said Cover Note remains valid for a period of 60 days from the date of its issue and the Insurance Company is to issue a policy of insurance before the date of expiry of Cover Note (vide Rule 142(2) of the Motor Vehicles Rules, 1989). Such Cover Note is to be followed by a policy of insurance to be issued within a time fixed and prescribed. If the Insurance Company decides not to issue a policy of insurance because of non-compliance with any requirement or any other kind of disqualifying feature within the prescribed time, it is required to notify the said fact to the registering authority

in whose records the concerned motor vehicle has been registered or to such other authority as is prescribed by the State Government. When the insurer issues a policy of insurance the provisional coverage becomes final. The policy of insurance, however, will be of no effect for the purpose of Chapter XI of the Motor Vehicles Act, 1988 unless and until the insurer issues a certificate of insurance in the prescribed form in favour of the person by whom policy is effected (vide Section 147(3) of the Act of 1988). Thus, a cover note issued by the insurer remains valid and effective for a period of 60 days or till it is cancelled or withdrawn or replaced by a policy of insurance whichever is earlier.

8. "Certificate of Insurance" has been defined in Section 145 of the Act of 1988. Section 149 of the Act of 1988 provides that after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of a person by whom a policy has been effected, judgment or award in respect of any such liability as contemplated u/s 147(1)(b) in respect of any third party or a passenger of a public service vehicle, the insurer is liable to satisfy any judgment or award in favour of such third party or passenger notwithstanding the fact that the insurer became entitled to avoid or cancel or might have avoided or cancelled the policy before accident took place. Once a certificate of insurance is issued under Sub-section (3) of Section 147 of the Act, the Insurance Policy and/or coverage will continue to remain in force till it is expressly cancelled or withdrawn subject to fulfilment of the conditions contained therein. Section 149 of the Act of 1988 obviously pre-supposes existence of a valid and lawful Insurance Policy and issuance of a valid certificate of insurance. There cannot be any valid Insurance Policy or any contract of insurance without payment of premium. Premium is the consideration for entering into a contract of insurance. A contract without consideration is void. Moreover, Section 64-V-B of the Insurance Act makes it clear that Insurance Company does not assume any risk, if premium is not paid. Where there is no existence of any Insurance Policy in law, there is no question of cancellation. Liability as contemplated by Section 149 of the Act of 1988 cannot be extended to a case where there was never any valid contract of insurance in law. In the present case, undisputedly the cheque was dishonoured and the Insurance Company did not receive any premium. It has already been held by this Court in the decision of National Insurance Company Ltd. v. Madhav Chandra Das and Ors. reported in 1995 1 TAC 50 that when premium has not been paid Cover Note becomes ineffective and there can be no existence of policy which obliges the insurer to pay compensation.

9. On behalf of the appellant it has been submitted that once the Cover Note is issued it is to be presumed that premium has been paid. Presumption is not conclusive. It means that unless contrary is proved existence of a fact is to be accepted. In the present case there was materials to show that premium was not paid and the Insurance Company duly intimated the said fact and consequential cancellation/withdrawal of document of insurance to the owner and also to the Motor Vehicles Department long before the accident took place. The relevant documents were produced before the Tribunals Insurance Company also

examined its Branch Manager, Berhampur to prove that the cheque deposited by the owner was dishonoured and no premium was paid. In the present case presumption, if any, has been rebutted. In Madhab Chandra Das's case (supra) this Court found that there was material to show that the premium was paid and on the basis of such findings this Court turned down the plea of the Insurance Company and held that once the certificate of insurance was issued, normal presumption would be that premium had been received. While laying down the said proposition this Court also made it clear that the position might be different in case of a cheque where it had bounced. It has been expressly laid down that if premium has not been paid Cover Note becomes ineffective and there can be no existence of policy of insurance. Madhab Chandra Das's case does not help the appellant in any way or manner, rather it is contrary to his contentions. In order to fasten any liability on the Insurance Company as provided under the provisions of Chapter XI of the Act of 1988, there must be initial existence of a legally valid certificate of insurance and Insurance Policy where no premium has been paid or received, there is no legally valid certificate of insurance or for that matter no contract of insurance. To hold otherwise will amount to giving active encouragement to fraud committed or likely to be committed by unscrupulous owners of motor vehicles. However, in the present case coverage was expressly withdrawn and cancelled long before the date of accident and such cancellation was duly intimated to the owner and R.T.O., Chhatrapur by letter dated July 13, 1990. Accordingly, I am not inclined to accept that the Insurance Company is to pay compensation awarded in this case.

10. As it has been held that due to non-payment of premium there was no legal existence of any certificate of insurance or insurance policy, it is not necessary to consider the submission whether policy/certificate of insurance was void on the ground of non-disclosure of material fact or false representation within the meaning of Section 149(2)(b) of the Act, 1988.

11. The appellant has also pleaded in this appeal that the compensation awarded is unjustly low and the same should be enhanced. It has been submitted on his behalf that a compensation of Rs. 10,000/- is even lower than no-fault compensation of Rs. 15,000/-. No-fault compensation u/s 140 of the Act of 1988 is available only in the case of death or permanent disablement. There is no case of permanent disablement and as such the compensation cannot be related to no-fault amount as provided under the Act. It appears from the medical report issued by the Sub-Divisional Hospital, Bhanjanagar that he suffered two simple lacerated injuries on his right hand. It has been claimed that subsequently the said injuries got septic and he had to be admitted in the Bhanjanagar Hospital, where he underwent treatment as an Indoor patient from April 27, 1991 to May 7, 1991. There is no dependable evidence that the appellant has suffered from any disability or any loss of earning capacity. The evidence adduced on behalf of the appellant on this question is inconsistent and insufficient.

12. Considering all aspects of the case, the compensation as awarded by the

Tribunal does not appear to be unreasonable. Accordingly, this Court is not inclined to admit the appeal.

Let the records be sent down immediately to enable the appellant to execute the award in accordance with law.