

(2007) 03 PAT CK 0047

In the Patna High Court

Case No : Miscellaneous Appeal No. 65 of 2002

Divisional Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Arjun Ram and Others

RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 147

Citation : (2007) 3 PLJR 134

Hon'ble Judges : Syed Md. Mahfooz Alam, J

Bench : Single Bench

Advocate : Ram Chandra Lal Das and Ashok Kumar, for the Appellant;

Judgement

Syed Md. Mahfooz Alam, J.—This Miscellaneous Appeal has been filed by the appellant-Divisional Manager, National Insurance Company Limited against the order dated 16.10.2001 passed by 6th Additional Motor Vehicle Accident Claims Tribunal, Muzaffarpur in Claim Case No. 99 of 1999 whereby the Tribunal has been pleased to award Rs. 50,000/- to the claimants as ad-interim compensation under the provisions of Section 140 of the Motor Vehicles Act (hereinafter will be called as "M.V. Act"). It appears that respondents Nos. 1 to 4, namely, Arjun Ram, Rinki Kumari. Indal Ram and Pinki Kumari, filed claim application before the learned Motor Vehicle Accident Claims Tribunal, Muzaffarpur and the same was registered as Claim Case No. 99 of 1999. In the said claim case, a petition u/s 140 of the M.V. Act for grant of ad interim compensation was filed on behalf of the claim ants which was disposed of by the learned Tribunal on 16.10.2001 whereby he allowed ad interim compensation to the tune of Rs. 50,000/- to the claimants and ordered the appellant-Insurance Company to pay the compensation within 30 days from the date of the order.

2. It has been argued by the learned Advocate of the appellant that the insurance Company is not liable to satisfy the interim award as the insurance policy was not valid on the alleged date of accident because of the fact that the cheque issued by the owner of the vehicle towards payment of premium could

not be encashed and when the same was deposited in the Bank the same was returned dishonoured. He submitted that u/s 147 of the M.V. Act, the Insurance Company issues policy covering the liability of the insured as well as of third party for which the Company accepts premium from the insured but when the cheque issued by the owner of the vehicle is not honoured by the Bank and the same is not encashed, it will be deemed that the cover note issued by the Insurance Company is not valid under law and, therefore, in such cases, the Insurance Company is not liable to pay compensation.

3. It appears that the Hon'ble Apex Court has already decided this contentious issue in several cases and it appears that the learned Tribunal while passing the impugned order has placed reliance upon the two decisions of the Apex Court reported in *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others*, and *New India Assurance Co. Ltd. Vs. Rula and Others*, . In both the decisions the Apex Court has held that once the Insurance Company issued policy the Company becomes liable to indemnify the claim of the third party and the plea that the premium was not paid on account of non-encashment of cheque, does not remain available to the Insurance Company so far third party risk is concerned.

4. Since in this case also, the case of the appellant-Insurance Company is that the cheque issued by the owner against the policy could not be encashed by the Insurance Company as the same was dishonoured, as such the plea that the appellant-Insurance Company is not liable to pay the compensation to the third party is not tenable in view of the decisions of the Apex Court referred above. I am therefore of the view that the subsequent cancellation of policy by the Insurance Company after dishonour of cheque would not affect the right of a third party which has accrued to him on the date of accident.

5. It has been argued by the learned Advocate of the appellant-Insurance Company that where premium remains unpaid because of the cheque returned as dishonoured, the contract between the insurer and insured becomes void and in such circumstance, the Insurance Company is entitled to reimburse the amount which had been disbursed to satisfy the award, in support of his argument, the learned Advocate of the Insurance Company has placed reliance upon the decision reported in (2001)3 SSC 151 (*National Insurance Company Ltd., appellant vs. Seema Malhotra and Others*, respondents). I am of the view that the contract is reciprocal act of the parties and if the insured fails to pay the premium for the policy of his vehicle or if the cheque handed over to the Insurance Company by the insurer is dishonoured by the bank, (if it is produced for encashment within a reasonable time) then in that case it will be deemed that the contract between the insurer and the insured does not subsist and under such circumstance, if the insurer pays any amount to third party to satisfy the award, then the insurer is entitled to reimbursement of such amount. But in view of the decision of the Apex Court in the case of *Oriental Insurance Co. Ltd., appellant vs. Nanjappan and Others*, respondents (2004)13 SSC, 224 the proper course for the insurer (appellant-Insurance Company) is firstly to satisfy the

award, as ordered by the Tribunal, and then take necessary steps for reimbursement of the amount from the owner of the vehicle. In the result, I do not find any merit in this appeal and the same is hereby dismissed with direction to the appellant-Insurance Company to satisfy the interim award within a period of two months from the date of this order with liberty to the appellant-Insurance Company to file petition before the Tribunal or executing court for reimbursement of the amount. It is further ordered that the statutory amount which is in deposit will be withdrawn by the claimant if the interim award has not been satisfied by the appellant-Insurance Company as yet and if the interim award has already been satisfied then in that case the Insurance Company will be at liberty to withdraw the same.