(2014) 01 DEL CK 0190

In the Delhi High Court

Case No : MAC. APP. 498 of 2009 & Mac. App. 498 of 2009

ICICI Lombard General Insurance Co. Ltd. — APPELLANT

Vs

Smt. Usha and Others — RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:
Insurance Act, 1938 — Section 64VB
Motor Vehicles Act, 1988 — Section 147(5) 149(1)

Citation : (2014) 01 DEL CK 0190

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant; Bhupesh Narula and Mr. Ashikesh Gupta for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Instant appeal has been preferred against the award dated 10.07.2009, whereby, ld. Tribunal while granting the compensation amount of Rs. 12,35,000/- with interest @ 7% per annum has given the recovery rights in favour of the appellant against respondent nos. 4 and 5. Vide the present appeal, appellant is seeking direction to exonerate as the cheque of premium amount was bounced and in that eventuality they are not liable to pay any compensation and entitled for exoneration.

2. Admittedly, recovery rights have been granted in favour of the appellant.

3. Appellant/insurance Company in its written statement before the ld. Tribunal took a plea that cover note filed on record is null and void ab initio because the premium cheque issued by insured against the said cover note was dishonoured and accordingly, appellant did not receive any premium against the said cover note. It was further submitted that the said cover note was duly cancelled and thus there did not exist any valid, lawful, bindings and enforceable contract of insurance, hence, the offending vehicle was not insured on the date of accident. To prove this, appellant/insurance company examined R3W1 Sh. Gaurav

Malhotra, Manager (Legal) ICICI Lombard General Insurance Company Ltd., who deposed that the cover note no. PC1538383 was issued to Ms. Pooja Arora against the receipt of premium cheque bearing no. 858159 for an amount of Rs. 13,456/- drawn on Punjab and Sindh Bank. The said premium cheque issued by Ms. Pooja Arora was dishonoured on its presentation and returned back on 06.04.2006 with remarks "insufficient funds". On the non-receipt of premium, the said cover note no. PC1538383 was cancelled vide notice addressed to Ms. Pooja Arora dated 25.04.2006 sent vide UPC dated 09.05.2006 and same is Ex. R3W1/A. Copy of the notice is Ex. R3W1/B. The cover note in question was cancelled before the date of accident. The photocopy of the cover note attested by him is Ex. R3W1/C which is supplied by the claimants. In this case the intimation was given to insurer later.

4. Similar issue came before this court in the case of Usha Aggarwal v. Pramod Kumar Gupta & Ors., MAC. APP. No. 495/2012, decided on 27.11.2013 wherein it is held as under:

15. Admittedly, the cheque was issued by the respondent No. 2 Raju Gupta, i.e., the owner of the offending vehicle on 15.03.2001 for issuance of cover note. Accordingly, the respondent No. 3 issued cover note in favour of the respondent No. 2. Thereafter, on the cheque being dishonoured, the respondent No. 3 Insurance Company sent notice dated 28.03.2013 by cancelling the said cover note.

16. The question before this Court for consideration is whether the cover note once issued and thereafter on the cheque being dishonoured, the said cover note continued in force as the third party risk is concerned.

17. The similar issue came before the High Court of Kerala in the case of Oriental Insurance Co. Ltd. Vs. Sivankutty, wherein the Court held that the liability of the Insurance Company in damages for third party risks continues for the entire period covered by the policy in spite of the cheque issued towards payment of premium was dishonoured and consequently policy was cancelled by the Insurance Company. The remedy of the Insurance Company lies against the "insured" to have the amount paid by them by way of compensation for third party risks to be got reimbursed.

18. Moreover, in the case of Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, the Apex Court held that despite the bar created by Section 64VB of the Insurance Act, the appellant, an authorized insurer, issued a policy of insurance to cover the bus without receiving the premium. By reason of the provisions of Section 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

19. In view of the above, the respondent No. 3 Insurance Company cannot be

absolved of its obligation to third parties under the policy because it did not receive the premium. It has remedies in this behalf lay against the insured. It was the Insurance Company itself who was responsible for its predicament. It had issued the policy of insurance upon receipt of a cheque towards the premium in contravention of the provisions of Section 64VB of the Insurance Act. A policy of insurance being a public interest concept prevails over the interests of the Insurance Company.

20. The Ld. Tribunal has wrongly exonerated Respondent No. 3 Insurance Company from the liability and directed respondents no. 1 and 2 to pay the compensation. Ld. Tribunal has not considered the settled law regarding the statutory liability of the insurance company which is also envisaged as per the provisions of Motor Vehicles Act, 1988.

21. In view of the above discussion and the settled law, the Insurance Company is directed to pay the compensation amount before the ld. Tribunal within five weeks from the date of receipt of this judgment, in terms of the award dated 29.05.2010 with recovery rights against the respondent no. 2, i.e., the owner of the offending vehicle.

5. In view of above, I do not find any merit in the present appeal and the same is accordingly dismissed.

6. Compensation amount shall be released in favour of the respondents/ claimants in terms of the order dated 24.02.2010 passed by this court. Statutory amount shall be released in favour of the appellant.