

(2012) 02 DEL CK 0028

In the Delhi High Court

Case No : MAC. App. No. 731 of 2011 and CM. Appl 15091 of 2011

Karam Vir Singh

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Insurance Act, 1938 — Section 64VB, 64VB(1)

Citation : (2012) 02 DEL CK 0028

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Nitin Yadav, for the Appellant; J.P.N. Shahi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—A short point requires consideration in this Appeal preferred by Karam Vir Singh, owner of a Jeep bearing No. HR-20-F-6167 which caused an accident on 05.03.2001 resulting in serious injuries to the Second Respondent (the Claimant); the Claims Tribunal while awarding a compensation of Rs. 6,65,336/- granted recovery rights to the First Respondent.

2. The facts of the case are not in dispute. A cover note covering the risk of the above stated vehicle was issued on 16.10.2000 and was valid upto 15.10.2001. The plea of the First Respondent (Insurer) was that since the cheque issued by the Appellant was dishonoured, the First Respondent was not liable to indemnify the insured as u/s 64VB of the Insurance Act, 1938, the insurance cover could be made only on receipt of the premium in advance.

3. It is very strange that although the First Respondent alleges that the cheque was dishonoured on 04.12.2000, yet as per the case of the First Respondent itself a notice informing of the cancellation of the policy was sent only on 04.12.2004 i.e. more than three years after the issuance of the policy and after the date of the accident. Sending of the said notice was also not proved as the

postal receipt or any other document through which the notice was sent was not placed on record.

4. The learned counsel for the First Respondent placed reliance on a Division Bench judgment of the Madhya Pradesh High Court in *United India Insurance Co. Ltd. Vs. Ratan Singh and Others*, wherein after quoting Section 64VB of the Insurance Act, the Division Bench held as under:

10. A bare reading of the section shows that the object of the section is to secure advance payment of the premium by the Insurance Company before the assumption of risk. S. 64VB(1) places a prohibition upon the insurer that unless and until it receives the payment of premium or the same is guaranteed to be paid in a particular manner and within a particular time as may be prescribed in advance, there can be assumption of risk on the part of the insurer. Sub-sec.(2) lays down that the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer in case of those risks for which premium can be ascertained in advance. The Explanation to this sub-section further makes it clear that the premium may be tendered by postal money order or by cheque sent through the post and the risk may be assumed on the date on which the said money order is booked or the cheque is posted. Therefore, it is clear that in terms of the mandate of S. 64VB the liability is assumed only after the premium is received in advance.

5. It goes without saying that the Insurer was at liberty to cancel the policy of insurance in case of dishonour of the cheque. However, in the instant case, the Insurer kept quiet for more than three years after the alleged dishonour of the cheque and also of the accident. As the first Respondent failed to intimate the owner as well as the transport authority regarding cancellation of the insurance policy on account of dishonouring of the cheque the Insurance Company cannot avoid its liability. I am supported in this view by a judgment of this Court in *National Insurance Company Ltd. v. P.V. Lonan & Ors.* 2008 (10) AD (Delhi) 850. In Para 10 of the report it was held as under:-

10. Further, respondents no. 3 and 4 had been contesting the petition despite having knowledge of the plea of the appellant regarding the cancellation of the policy due to dishonour of premium cheque and never challenged or refuted such allegation of the appellant. Therefore, the Tribunal ought to have held that the allegation of the appellant, that on account of dishonor of premium cheque of the owner, the policy was cancelled under intimation to the owner and RTO, are deemed to be admitted by the owner of the vehicle.

6. In *Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd.*, it was held that if the contract of insurance was cancelled and all concerned were intimated about the same, the Insurance Company would not be liable to satisfy the claim. In this case, although as stated earlier, the Insurance Company was aware at least in December, 2000 that the cheque was dishonoured, neither the insured nor the RTO was informed about the

cancellation of the policy, (the accident took place on 15.03.2001). Had the Insurance Company informed the Appellant about the dishonour of the cheque in December, 2000 itself, the Appellant could have taken steps to revive the insurance cover either by issuing a demand draft or by making the payment in cash. The Oriental Insurance Co. Ltd., the first Respondent itself was to be blamed for the predicament in which it was placed. In the circumstances, the First Respondent is not entitled to recover the amount of compensation paid by it to satisfy the claim of a third party. Thus, the impugned order granting recovery rights to the First Respondent is set aside.

7. The Appeal is allowed in above terms.