(2018) 07 GAU CK 0038

In the Gauhati High Court

Case No : Moter Accident Appeal No. 48 Of 2016, Mc 48 Of 2016

M/S. New India Assurance Co. Ltd. APPELLANT

Vs

Laku Moni Borah Bhuyan And 2 Ors. RESPONDENT

Date of Decision : 16-07-2018

Acts Referred:

Motor Vehilce Act, 1988 — Section 147(5), 149(1)
Insurance Act 1938 — Section 64VB

Citation : (2018) 07 GAU CK 0038

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : K.K. Bhatta, R. Baruah

Final Decision : Dismissed

Judgement

1.Â Heard Mr. K.K. Bhatta, leaned counsel for the appellant/insurance company and Mr. R. Baruah, learned counsel for the respondent/claimant.

2.Â This appeal is filed by the insurance company against the judgment and award dated 11.11.2013 passed by the MACT, Sonitpur in MAC Case

No. 56/2011.

3.Â The only question raised in this appeal is that the cheque issued by the insured towards payment of premium was dishonored and the policy was

subsequently cancelled and therefore, the insurance company had no liability to indemnify the award. Law in this regard is no longer res-integra. The

Apex Court in United India Insurance Co. Ltd. Vs. Laxmamma & Ors. reported in (2012) 5 SCC 234 dealing with the similar situation, where the

cheque was dishonored and the insurance company wanted to avoid the liability, held in paragraph-19 of the judgment as under:

â??26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the

payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the

liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147 (5) and 149(1)

of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before

the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards

premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and

sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the

insurance company is not liable to satisfy awards of compensation in respect thereof.

4.Â In another judgment of the Apex Court in Oriental Insurance Co. Ltd. Vs. Inderjit Kaur & Ors. reported in (1998) 1 SCC 371, a three judges

Bench of the Apex Court while considering the consequence of dishonor of cheque held in paragraphs-9, 10 and 12 as under:

â??9. We have, therefore, this position. Despite the bar created by Section 64-VB of the Insurance Act, the appellant, an authorised insurer, issued a

policy of insurance to cover the bus without receiving the premium therefor. By reason of the provisions of Section 147(5) and 149(1) of the Motor

Vehicles Act , the appellant became liable to identify third parties in respect of the liability which that policy covered and to satisfy awards of

compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the policy for the

reason that the cheque issued in payment of the premium thereon had not been honoured.

10.Â The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The

appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay

against the insured.

12.Â It must also be noted that is was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt

only of a cheque towards the premium in contravention of the provisions of Section 64-VB of the Insurance Act. The public interest that a policy of

insurance serves must, clearly, prevail over the interest of the appellant.â??

5.Â In the instant case, the premium was paid by a cheque on 18.10.2010 and on the same date, the policy was issued, which has been proved as

Ext.C and it was effective from 19.10.2010 till 18.10.2011. Allegedly, the cheque was dishonored and the insurance company informed the insured

about dishonor of the cheque on 13.12.2010, whereas the accident took place on 16.11.2010, meaning thereby, the owner/insured was not informed

about the dishonor of cheque prior to the accident. Dishonor of cheque was brought to the notice of insured almost after one month. In the above

situation, the insurance company cannot avoid the liability to satisfy the award as per the mandate of the Apex Court in Inderjit Kaur (supra) and also

Laxmamma & Ors. (supra).

6.Â Since, no other point is involved in this appeal, this appeal is found devoid of merit and accordingly, dismissed.

7.Â The statutory deposit shall be returned to the appellant/insurance company.

8.Â Send back the LCR.

