

(2005) 07 MP CK 0085

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 2513 of 2000 and 121 of 2001

National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Maina Singh and Others
 Smt. Maina Singh and
Others Vs Smt. Shashi Pandey and Others

RESPONDENT

Date of Decision : 27-07-2005

Acts Referred:

Insurance Act, 1938 — Section 64VB

Motor Vehicles Act, 1988 — Section 146, 147, 147(1), 147(3), 147(5)

Citation : (2006) 1 MPHT 537

Hon'ble Judges : U.C. Maheshwari, J;Arun Mishra, J

Bench : Division Bench

Advocate : Sanjay Agrawal, in M A. No. 2513/2000 and P.K. Jain, in M.A. No. 121/2001, for the Appellant; P.K. Jain, for Respondent Nos. 1 to 5, Vijay Raghavsingh and None for Respondent No. 7 in M A. No. 2513/2000 and Vijay Raghavsingh, for Respondent No. 1, Sanjay Agrawal and None for Respondent No. 2 in M.A. No. 121/2001, for the Respondent

Judgement

Arun Mishra, J.—These appeals have been preferred by the claimants and insurer, Claimants have filed M.A. No. 121/2001 for enhancement of compensation whereas other Misc. Appeal No. 2513/2000 has been preferred by the insurer as against the joint and several liability which has been fastened on it to make payment of compensation.

2. In an accident dated 24-11-96 at about 11.30 PM deceased Shri Moolchand, Head Constable was going to Police Station, Panagar on his scooter (MUJ-7572), when he reached near Village, Kewalari truck (MP20-G/0820) came at high speed, dashed against the scooter, deceased fell down, sustained severe injuries and died on the spot. Another Constable Shri Ravishankar who was coming behind, lodged the report at the concerned police station. Truck was driven by Shri Sul Khan Singh, owned by Smt. Shashi Pandey, insured with National Insurance Co. Ltd. It was claimed that deceased was earning a sum of Rs. 4,370/- per month- His age was 45 years. Compensation of Rs. 14,18,860/-was

claimed along with interest.

3. The driver remained exparte. Owner contended that vehicle was not involved in the accident. Accident was caused by some unknown vehicle, false case has been concocted. Applicant No. 5 Ku. Shraddha Singh is not legal heir of deceased, there was no negligence on part of driver of the truck, truck was under repair, criminal case was registered falsely so as to give benefit to the family of the police constable. Vehicle was insured with the insurer for the period 13-9-96 to 14-9-97, policy was issued which came into force on 25-11-96. In the circumstances, owner is not liable, liability is that of insurer to make payment of compensation.

4. The insurer in the written statement contended that correct facts about the insurance policy have not been disclosed. It is necessary to deposit advance premium u/s 64VB of the Insurance Act. Alleged incident took place on 24-11-96 whereas the cover note was issued on 25-11-96 and the vehicle was insured for the period with effect from 25-11-96 to 24-11-97. A cheque which was issued under the policy in September, 96, was dishonoured, intimation of dishonour of the cheque was given to owner, in spite of that the premium was not deposited as such policy was not in force as on the date on which accident took place on 24-11-96. Owner, Insurer of the scooter are necessary parties, hence, application filed u/s 166 is not tenable.

5. The Claims Tribunal while answering Issue No. 1 found that accident was caused owing to rash and negligent driving of the truck. Deceased was not negligent, Shri Moolchand sustained injuries in the accident and succumbed to the injuries on the same day.

6. The monthly income of the deceased was taken at Rs. 3,000/-, dependency was taken at 50% i.e., Rs. 1,500/- per month, at the age of 45 multiplier of 12 was applied, compensation of Rs. 2,23,000/- has been awarded along with interest at the rate of 9% per annum from the date of filing of claim petition. Liability has been held to be joint and several of the insurer, driver and owner of truck.

7. Claimants have filed an appeal for enhancement. It is submitted that monthly salary of the deceased was Rs. 4400/-. Salary certificate has also been filed which shows that salary was Rs. 4377/- per month. Age of deceased was 45 years, income has been wrongly taken to be Rs. 3,000/-. Appropriate multiplier has not been applied. Only 1/3rd deduction should have been made out of total salary, thus, the Claim Tribunal has not awarded just compensation to the claimants. Amount be enhanced.

8. Shri Sanjay Agarwal, learned Counsel appearing for insurer in M.A. No. 2513/2000 submitted that the insurance policy was issued on 13-9-96, cheque was dishonoured, insurer received the information from the Bank on 18-9-96, on 19-9-96 owner was informed as per letter (D/4-C) dated 19-9-96 that the receipt which was issued of receipt of premium was cancelled and Company was not on

risk under the policy which was issued till such time remittance is received by cash or demand draft. He has further submitted that said intimation was received by the owner on 29-9-96 as apparent from acknowledgment (D-3), in spite of receiving the intimation till the date of accident on 24-11-96, the premium was not paid, premium was paid on next day on 25-11-96. Fresh policy was issued by the insurer covering the period 25-11-96 to 24-11-97. Thus, on the date of accident there was no policy of insurance in existence as the premium was not paid, hence, insurer has been illegally saddled with the liability to make payment of compensation by Claims Tribunal.

9. Shri Vijay Raghav Singh, learned Counsel appearing for owner has submitted that policy was not cancelled, only receipt of payment of money was cancelled. In the absence of cancellation of policy, insurer can not escape the liability.

10. First we come to the question of quantum of compensation. It is apparent that deceased was Head Constable in the police force of State of M.P. His salary was Rs. 4377/-. There is statement of Ms. Maina Singh (C.W. 1) widow of deceased. She has stated that her husband was receiving salary of Rs. 4400/-. In our opinion, the Claims Tribunal has erred in law in taking the income of deceased at Rs. 3,000/- per month. The statement of widow finds support with the salary certificate filed in this appeal. We allow the application to take the salary certificate on record which has not been disputed. We find that gross salary was Rs. 4377/-, the amount which was received by the deceased in hand was Rs. 4,097/-. We take the salary of deceased at Rs. 4100/- which he was actually receiving in hand. 1/3rd amount has to be deducted towards self expenditure of the deceased which he would have spent had he been alive, thus, the loss of monthly dependency comes to Rs. 2733/-. Annual loss of dependency comes to Rs. $2733 \times 12 = \text{Rs. } 32,796/-$. Age of deceased was 45 years, appropriate multiplier is 15 which we apply as widow and children are claimants. Thus, total loss of dependency comes to Rs. $32,796 \times 15 = \text{Rs. } 4,91,940/-$. In addition claimants are entitled for Rs. 15,000/- which is customary amount on account of funeral expenses, loss of estate, loss of consortium and expectancy of life. Thus, total compensation comes to Rs. $4,91,940 + \text{Rs. } 15,000 = \text{Rs. } 5,06,940/-$ (Rs. Five Lacs Six Thousand Nine Hundred and Forty only). Enhanced compensation to carry interest at the rate of 6% per annum from the date of filing of claim petition. The approach of the Trial Court of determining the compensation can not be said to be justified. It has erred in taking the salary at Rs. 3,000/- by deducting 50% amount from the salary determined. Only 1/3rd deduction is permissible as per 2nd Schedule of Motor Vehicles Act, 1988.

11. Coming to question of liability of insurer. It is not in dispute that insurance policy was issued for a period of one year covering the risk from 13-9-96 to 12-9-97 as the owner was running several transport vehicles, premium was paid vide cheque dated 13-9-96. It appears that cheque was dishonoured. Insurer was informed by the Bank on 18-9-96 about the dishonour of the cheque. Letter (D-3) was written as stated by Shri A.K. Dutta (NAW 1) regarding cancellation of

receipt to the owner on 19-9-96. It was further mentioned that company is not on risk under the said receipt till such time fresh remittance is received by cash or demand draft. However, the fact remains that policy of insurance which was issued was not cancelled. Cancellation of it has not been mentioned in letter (D-3) dated 19-9-96. Shri A.K. Gupta (NAW 1) has not stated that policy was cancelled at any point of time by the insurer. No document has been filed to show that policy was cancelled. It appears that said intimation was received by owner Ms. Shashi Pandey on 21-9-96. The question for consideration is whether in the absence of cancellation of policy and merely due to cancellation of receipt which was issued of the deposit of the amount, insurer can escape the liability from making payment of compensation to the third party. The Apex Court in *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others*, has laid down that once a policy has been issued in respect of third party risk, even without receiving the premium, insurer becomes liable to indemnify third party liability in respect of liability which policy covers and to satisfy the awards of compensation. Section 64VB of Insurance Act was also considered by Their Lordships. It was held that it does not absolve the insurer of liability. Earlier decision in *United India Insurance Co. Ltd. v. Ayab Mohammed* 1991 ACJ 650 (SC), was over ruled by the Apex Court. The Apex Court has held that once policy has been issued, by reason of the provisions of Sections 147(5) and 149(1) of Motor Vehicles Act, 1988, the insurance company became liable to indemnify third party liability in respect of liability which that policy covers and to satisfy the awards of compensation in respect thereof. The Apex Court in *Indrajit Kaur* (supra) held :--

7. Chapter 11 of the Motor Vehicles Act, 1988, provides for the insurance of motor vehicles against third party risks. Section 146 thereunder states that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle's policy of insurance that complies with the requirements of the Chapter. Section 147 sets out the requirements of policies and the limits of liability. A policy of insurance, by reason of this provision, must be a policy which is issued by a person who is an authorised insurer. Sub-section 5 reads thus :

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this Section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

Section 149 refers to the duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. Sub-section (1) thereof reads thus :--

(1) If, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of Sub-section (1) of Section 147 (being a liability

covered by the terms of the policy) (or under the provisions of Section 163A) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

8. We have, therefore, this position. Despite 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 therefor. By reason of the provisions of Sections 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 (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. We may note in this connection the following passage in the case of *Montreal Street Railway Company v. Normandin* AIR 1917 PC 142:

When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

11. It must also be noted that it 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 64VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant.

12. In *New India Assurance Co. Ltd. Vs. Rula and Others*, the Apex Court has laid down that if insurance policy has been issued on the basis of cheque and policy was not cancelled on the date of accident in spite of the fact that cheque was dishonoured, policy was cancelled subsequent to the date of accident, on consideration of Sections 147(5) and 149 it was held that insurance company can not avoid liability in respect of third party. The Apex Court held :--

9. Section 149 casts a duty on the insurer to satisfy judgments and awards against persons insured in respect of third party risks. Sub-section (1) of Section 149 is quoted below :--

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.--

(1) If, after a certificate of insurance has been issued under subsection (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163A is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

11. Thus, any contract of insurance under Chapter XI of the Motor Vehicles Act, 1988 contemplates a third party who is not a signatory or a party to the contract of insurance but is, nevertheless, protected by such contract. As pointed out by this Court in *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, , the rights of the third party to get indemnified can be exercised only against the insurer of the vehicle. It is thus clear that the third party is not concerned and does not come into the picture at all in the matter of payment of premium. Whether the premium has been paid or not is not the concern of the third party who is concerned with the fact that there was a policy issued in respect of the vehicle involved in the accident and it is on the basis of this policy that the claim can be maintained by the third party against the insurer.

13. Division Bench of this Court in *Gaura Bai and Others Vs. Dev Nath Makad and Others*, has followed the decisions of Apex Court in *Oriental Insurance Co. Ltd. v. Inderjit Kaur* AIR 1998 SC 588, *New India Assurance Co. Ltd. Vs. Rula and Others*, and *National Insurance Co. Ltd. Vs. Seema Malhotra and Others*, , and has taken a similar view.

14. In view of the aforesaid decisions, it is clear that with respect to third party liability, insurer is bound by the policy. Policy has to be cancelled. In the instant case only the receipt of payment was cancelled, payment was required to be made afresh under the policy which was issued. No steps were taken by the insurer to cancel the policy as such in our considered opinion the claimant is liable to be indemnified by insurer and has been rightly held to be liable by learned Claims Tribunal.

15. Shri Sanjay Agarwal, learned Counsel appearing for Insurer has submitted that accident took place on 24-11-96, thereafter fresh premium was paid on 25-11-96, thus, conduct of owner was not fair. Fact remains that policy issued on 13-9-96 covered the risk of third party on 24-11-96 as policy was not cancelled.

Merely that insurer has issued thereafter a fresh policy from 25-11 -96 to 24-11-97 would not absolve it as the earlier policy was not cancelled with respect to third party risk.

16. Thus, we find that appeal filed by insurer to be devoid of substance, we find partial merit in the appeal preferred by the claimants. Appeal preferred by the claimants is allowed to the aforesaid extent. Parties to bear their own costs as incurred.