(2012) 10 DEL CK 0062

In the Delhi High Court

Case No : MAC. App. 153 of 2005

National Insurance Company Ltd. APPELLANT

Vs

Roop Chand and Others RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(5), 149(1)

Citation : (2012) 10 DEL CK 0062

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

Bench : Single Bench

Advocate : Manjusha Wadhwa, for the Appellant;

Judgement

G.P. Mittal, J.—The Appellant National Insurance Company Limited impugns a judgment dated 17.01.2005 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of Rs. 2,05,200/-in favour of the Claimants, the Appellant''s plea of exoneration on the ground that it had cancelled the Insurance Policy on account of dishonour of cheque and had informed the insured, was accepted yet, the Appellant Insurance Company was made liable to pay the compensation with a right to recover the same from the insured. This Appeal was instituted on 14.03.2005 and execution of the award was stayed, subject to deposit of the award amount with the Claims Tribunal. It appears that the amount was not deposited with the Claims Tribunal. A perusal of the order dated 01.12.2009 reveals that the entire amount was realized by the Claimants in execution of the impugned judgment.

2. The recovery rights have already been granted to the Appellant Insurance Company against the insured. In view of the payment of the award amount to the Claimants, the Appeal has practically become infructuous.

3. The Supreme Court in its latest report in United India Insurance Company Limited v. Laxmamma & Ors., (2012) 5 SCC 234 relying on Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, , New India Assurance Co. Ltd. Vs. Rula

and Others, , and Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., held as under:-

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. Thus, in view of the judgment of the Supreme Court in Laxmamma, the Insurance Company having cancelled the Insurance policy much before the accident and having informed the insured about the same, had no liability to satisfy the award. However, in view of the fact that the compensation has already been realized by the Claimants, the Appellant Insurance Company shall be entitled to recover the amount of compensation paid from the insured, that is, Jawahar Singh/his legal heirs, in execution of this very judgment without having recourse to an independent proceedings.

5. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company.

6. Appeal stands disposed of accordingly. Pending Applications also stand disposed of.