
(2012) 03 DEL CK 0094
In the Delhi High Court
Case No : MAC. APP. 310 of 2009

New India Assurance Co. Ltd.

APPELLANT

Vs

Hukam Singh and Others

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2012) 03 DEL CK 0094

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

Bench : Single Bench

Advocate : Neerja Sachdeva, for the Appellant; Gaurav Kumar Singh, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The Appellant New India Assurance Company Limited impugns the judgment dated 05.02.2009 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) on the ground that instead of granting recovery rights, the Appellant was entitled to be exonerated as the Appellant proved on record that the cheque issued by the third Respondent was dishonoured on presentation and all the concerned were duly informed. It is urged that the case is covered by the report of the Supreme Court in Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., .

2. Para 13 of the impugned judgment is extracted hereunder:-

As regards the liability of the Insurance Company, two witnesses examined in evidence of the Insurance Company. R3W1/Simeul Suman Xess has deposed that R2/Pankaj Kumar, the insured had given a cheque No. 269924 dated 31.8.01 for a sum of Rs. 24,804/- drawn on Vyash Cooperative New Bank Ltd. and said cheque was dishonoured when presented for encashment for insufficient funds in the accounts of R2/Pankaj Kumar. The witness has also proved registered letter, Ex. R3W1/2 dated 6.9.01, issued to R2/Pankaj Kumar and similar, letter sent to

regional Transport Authority on 5.9.01, copy of which Ex. R3W1/6 has also been proved by the witness. R3W2/Pankaj Gupta, an Assistant working with New India Assurance Co. Ltd. had proved Ex. R3W2/1 endorsement cancelling the policy No. 232101/31/01/0100003351. The dishonoured cheque has also been placed on record. In sum, the insurance policy, which was taken by R2 from R3/Insurance Company in respect of bus No. DL-1PB-1922 was cancelled since the cheque issued by R2 as premium for the policy was dishonoured and intimation to that effect was sent by insurance Company to R2 as well as Transport Authority by registered post in September 2001, much before the date of the accident. On behalf of Insurance Company, reliance has been placed on a case decided by the Hon"ble Supreme Court reported as Deddappa and others vs. National Insurance Co. Ltd., (2008) 2 Supreme Court Cases 595 and the facts in the case being relied are identical to the facts of the present case. In the circumstances, it is held that there was no valid insurance policy for the offending vehicle as on the date of the accident and R3/Insurance Company is not liable to pay the compensation to the petitioner. However, as directed by the Hon"ble Supreme Court in the case being relied on behalf of R3/Insurance Company, award shall be first satisfied by the Insurance Company and then, Insurance Company shall be entitled to recover the amount from R2, the owner of the offending vehicle.

3. It is urged by the Learned Counsel for the third Respondent that the third Respondent paid the amount of premium in cash when he received information about the dishonour of the cheque and the contract of Insurance was revived. No such plea was taken by the third Respondent as he was proceeded ex-parte. No Appeal has been filed by the third Respondent against the order passed by the Claims Tribunal granting recovery rights against the third Respondent.

4. In para 24 of the report in Deddappa & Ors. (supra), it was held as under:-

24. We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-a-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.

5. In Deddappa & Ors. (supra), the Supreme Court exercised its extraordinary jurisdiction under Article 142 of the Constitution of India to direct the first Respondent to pay the compensation to the Appellants (therein) as they belonged to the lower strata of the society.

6. The Claims Tribunal did not have jurisdiction to direct the Insurance Company to first pay the awarded compensation and then recover the same as the contract of insurance had become void and nonest on account of dishonour of the cheque and due information to all the concerned including the Insured i.e. the

third Respondent herein was given regarding the same.

7. The First Respondent (the Claimant) shall be entitled to recover the amount of compensation from the Respondents No. 2 and 3 i.e. the driver and the owner of the offending vehicle respectively.

8. The Appeal is allowed in above terms. No costs.