

(2013) 01 RAJ CK 0016
In the Rajasthan High Court
Case No : C.M.A. No. 500 of 1995

New India Assurance Co. Ltd.

APPELLANT

Vs

Mohan Kanwar and Another

RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Citation : (2014) 2 ACC 653 : (2014) ACJ 371

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Jagdish Vyas, for the Appellant; Dilip Kawadia, for the Respondent

Judgement

Arun Bhansali, J.—This appeal u/s 30 of the Workmen's Compensation Act, 1923 ("the Act") has been filed by insurance company against the judgment and award passed by the Workmen's Compensation Commissioner, District Udaipur dated 26.8.1995 awarding a sum of Rs. 86,764 as compensation with interest at the rate of 6 per cent per annum from the date of accident and has further imposed a penalty of Rs. 21,691, i.e., 25 per cent of the compensation and held the employer and the insurance company jointly and severally liable for payment of the amount of compensation, interest and penalty. Brief facts of the case are that Mohan Kanwar, respondent No. 1-claimant, aged 22 years, filed an application under the provisions of the Act before the Compensation Commissioner on 22.6.1986 against Mubarik Khan, respondent No. 2, and the appellant insurance company. It was, inter alia, stated in the application that her husband Shankar Singh was employed on the truck No. RRY 8238 as driver on 4.4.1986 and was being paid Rs. 1,000 per month as salary. At the time of accident, deceased Shankar Singh was aged 25 years. When the truck was going from Ahmedabad to Zawar Mines it fell into a ditch and driver Shankar Singh died during the course of employment. The claimant claimed a sum of Rs. 86,764 from the employer and as the truck was insured with the insurance company it was claimed that the said insurance company was also liable.

2. Learned Compensation Commissioner issued notices of the application to the

non-claimants, employer and insurance company. Employer refused to accept the notices and, therefore, he was ordered to be proceeded ex parte. The insurance company filed its reply and denied that the truck No. RRY 8328 was insured with it on the date of accident, i.e., 4.4.1986 and, therefore, it was not liable to pay the compensation. It was further stated that the insurance company has not received the amount of premium from the employer. It was stated that the employer had issued a cheque No. 0432554 dated 13.3.1986 for Rs. 6,957 drawn on Bank of Baroda for the insurance of truck No. RRY 8238, the receipt of the cheque was issued which was subject to realization of cheque. When the cheque was sent to the bank for encashing it the same was returned with a remark "refer to drawer", as soon as the same was received back, the insurance company wrote a letter to the employer to immediately send the premium so that risk can be covered, however, no steps were taken to deposit the premium. Insurance company informed the R.T.O., Udaipur also about cancellation of insurance cover. Once, the premium was not deposited then the insurance company is not liable, insurance cover so issued was void ab initio, because of non-receipt of premium amount and, therefore, the application be dismissed.

3. The application filed by the claimant for payment of interim compensation under the provisions of the Motor Vehicles Act was allowed by the Compensation Commissioner and a sum of Rs. 15,000 was ordered to be deposited.

4. On the pleadings of the parties, five issues were framed by the learned Commissioner. The material issue for the purpose of present appeal was as to whether the truck which met with the accident on 4.4.1986 was insured with the insurance company. The other issues related to the fact of death during the course of employment, income and age of the deceased and the amount of compensation payable to the claimant.

5. The issues relating to death during the course of employment, income and age of the deceased and compensation payable to the claimant were decided in favour of the claimant as claimed by her and the issue relating to the fact about the vehicle being insured with the insurance company was also decided in favour of the claimant and award as noticed hereinbefore was passed by the learned Compensation Commissioner.

6. On behalf of the claimant, Mohan Kanwar appeared in the witness-box along with Jodh Singh. On behalf of the insurance company, Daulat Ram Dayma, Divisional Manager of the insurance company, was examined along with Ziauddin Sheikh, the Development Officer of the insurance company. The Compensation Commissioner after hearing the parties on the contested issue relating to the liability of insurance company came to the conclusion that once certificate of insurance has been issued then even if the policy has been cancelled, still the judgment and award issued under the policy would inure for the benefit of the claimant. It also held that once a policy has been issued and thereafter cancelled, still the insurance company is liable to pay the compensation. The Commissioner also noticed that when the insurance company was ordered to pay

compensation on account of no fault liability under the provisions of the Motor Vehicles Act, 1939, the same was challenged before the High Court and the High Court did not grant any stay. It further came to the conclusion that the cheque was dishonoured for insufficient funds and the insurance company could have recovered the said amount by filing suit in the civil court and for all these reasons held the insurance company liable for the compensation.

7. I have heard learned counsel for the parties and perused the photocopies of claim application, reply and Exhs. D1, D2, D4, D8, D12 and D13 as during pendency of this appeal, the original record of the Compensation Commissioner was weeded out.

8. It was submitted by learned counsel for the appellant that the award impugned passed by the Commissioner holding the insurance company liable is against the settled position of law. It was submitted that it was proved on record that the owner issued the cheque on 13.3.1986 for a sum of Rs. 6,957, Exh. D1, regarding which a receipt dated 14.3.1986 was issued, Exh. D2, inter alia, containing the endorsement "receipt valid subject to realization of the cheque", the cheque was dishonoured by the Bank of Baroda, Exh. D4, with the endorsement "refer to drawer", the letter dated 19.3.1986, Exh. D5, was sent to respondent No. 2-employer informing about the dishonour of the premium cheque and the endorsement contained therein, the notice dated 19.3.1986 was issued to the Development Officer Ziauddin Sheikh, Exh. D6, letter dated 2.4.1986 was written to the Regional Transport Officer, Udaipur informing about the dishonour of the cheque and cancellation of policy, Exh. D7, and motor refund endorsement, Exh. D8, dated 31.3.1986 was made. Therefore, it was amply proved on record by documentary evidence that even before the date of accident, i.e., 4.4.1986, the policy issued by insurance company stood cancelled and, therefore, the insurance company was not liable and, therefore, the award impugned deserves to be quashed and set aside. The counsel in this regard placed reliance on judgments in the cases of Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., National Insurance Co. Ltd. Vs. Seema Malhotra and Others, United India Insurance Company Ltd. Vs. Ayeb Mohammed and Others, and National Insurance Co. Ltd. Vs. Mastan and Another, in support of his contention regarding liability of the insurance company. It was further submitted that in any case in view of the judgment of Hon'ble Supreme Court in the case of Ved Prakash Garg Vs. Premi Devi and others, the insurance company is not liable for the amount of penalty. It was prayed that the award impugned, therefore, deserves to be set aside.

9. On the other hand, the counsel for the respondent No. 1-claimant vehemently submitted that the award impugned does not require any interference by this court. It was submitted that no substantial question of law was involved in the appeal, appellant insurance company has failed to prove that the fact of dishonour of cheque and/or the cancellation of policy was informed to the employer and in any case, the insurance company should be directed to pay the

amount of compensation and recover the same from the owner even if this court comes to the conclusion that the insurance company was not liable. Reliance was placed on judgment in the case of National Insurance Company Vs. Sua Lal Sharma and Others, New India Assurance Co. Ltd. Vs. Rula and Others, and Regional Forest Officer v. Valiya, 2003 RAR 21.

10. I have considered the rival submissions made at the Bar. The position of law regarding the liability of insurance company in cases where the cheque relating to payment of premium has been dishonoured is now almost well settled by various pronouncements of Hon''ble Supreme Court. The Hon''ble Supreme Court after considering various judgments, in the case of Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., held as under:

(22) A contract is based on reciprocal promise. Reciprocal promises by the parties are conditions precedent for a valid contract. A contract furthermore must be for consideration.

(23) In today''s world payment made by cheque is ordinarily accepted as valid tender. Section 64VB of the 1938 Act also provides for such a scheme.

(24) Payment by cheque, however, is subject to its encashment. In Damadilal and Others Vs. Parashram and Others, this court observed:

On the ground of default, it is not disputed that the defendants tendered the amount in arrears by cheque within the prescribed time. The question is whether this was a lawful tender. It is well established that a cheque sent in payment of a debt on the request of the creditor, unless dishonoured, operates as valid discharge of the debt and, if the cheque was sent by post and was met on presentation, the date of payment is the date when the cheque was posted...

(Emphasis supplied)

(25) Recently, again in New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another, although in the context of the Workmen''s Compensation Act, 1923, Balasubramanyan, J. opined:

(24) ...It is not brought to our notice that there is any other law enacted which stands in the way of an insurance company and the insured entering into a contract confining the obligation of the insurance company to indemnify to a particular head or to a particular amount when it relates to a claim for compensation to a third party arising under the Workmen''s Compensation Act. In this situation, the obligation of the insurance company clearly stands limited and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. Unlike the scheme of the Motor Vehicles Act, the Workmen''s Compensation Act does not confer a right on the claimant for compensation under that Act to claim the payment of compensation in its entirety from the insurer himself...

It was further observed:

(23) The law relating to contracts of insurance is part of the general law of contract. So said Lord Justice Roskill in *Cehave v. Bremer*, (1976) QB 44. This view was approved by Lord Wilberforce in *Reardon Smith v. Hanson-Tangen*, (1976) 1 WLR 989, wherein he said:

It is desirable that the same legal principles should apply to the law of contract as a whole and that different legal principles should not apply to different branches of that law.

A contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense. [See *Colinvaux's Law of Insurance*, 7th Edn., para 2-01]. A policy of insurance has therefore to be construed like any other contract. On a construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay among other things under Workmen's Compensation Act. Unless one is in a position to void the exclusion clause concerning the liability for interest and penalty imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act, 1923, the insurer cannot be made liable to the insured for those amounts.

(26) 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.

(27) A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In *Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries*, this court held:

We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.

We, therefore, agree with the opinion of the High Court.

11. The Hon^{ble} Supreme Court in the case of *United India Insurance Company Ltd. Vs. Ayeb Mohammed and Others*, held as under:

(4) In the impugned judgment the High Court has taken the view that in the absence of steps taken for cancelling the cover note, the insurer's liability continued, although the bouncing of the cheque and steps taken by the insurer

cancelling the risk note have been found as a fact. In fact, the insurer had issued notice to the registering authority and parties that the cheque bounced and the liability ceases but the High Court has recorded a finding that the notice of cancellation has not been served on the insured. The fact that the cheque had bounced was a matter within the knowledge of the insured. At any rate, there would be that presumption and, therefore, in ordinary circumstances no special notice would be required.

(6) In the setting indicated we are of the view that the High Court was not right in holding that in the absence of steps for cancellation of the cover note, the risk would be subsisting...

12. The distinction between the liability of insurance company in a case arising under the provisions of the Motor Vehicles Act and Workmen's Compensation Act was noticed by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Mastan and Another, wherein it was held that:

(11) Applicability of the 1988 Act in a proceeding under the 1923 Act is contained in section 143 of the 1988 Act, which reads as under:

143. Applicability of Chapter to certain claims under Act 8 of 1923.--The provisions of this Chapter shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen's Compensation Act, 1923, resulting from an accident of the nature referred to in sub-section (1) of section 140 and for this purpose, the said provisions shall, with necessary modifications, be deemed to form part of that Act.

(12) Section 143 occurs in Chapter X of the 1988 Act. Section 144 contains a non obstante clause stating that the provisions of the said Chapter shall have effect notwithstanding anything contained in any other provisions of the said Act or of any other law for the time being in force. Chapter X deals with liability without fault in certain cases. Chapter X, therefore, will have no application in relation to a claim made in terms of Chapter XI of the 1988 Act.

(13) Applicability of the provisions of the 1988 Act in a proceeding under the 1923 Act is confined to a matter coming within the purview of Chapter X only. It cannot be stretched any further.

13. Coming to the facts of the present case, it would be noticed that the cheque dated 13.3.1986 for a sum of Rs. 6,957 was issued by the owner of the vehicle towards payment of premium vide Exh. D1 regarding which the receipt, Exh. D2, dated 14.3.1986 was issued, which clearly had the endorsement "receipt valid subject to realization of cheque". Thereafter, the cheque was dishonoured by the Bank of Baroda vide Exh. D4 (though the said memo does not bear any date) but Exh. D5 dated 19.3.1986 has been produced by the insurance company which is a crucial document and, therefore, the same is reproduced hereunder:

Place 22-23 Bapu Bazar, Udaipur

Date 19.3.1986

Registered A/D

To,

Shri Mubarak Khan,

S/o Shri Nana Khan,

330 - Alipura, Udaipur.

Dear Sir,

Sub: Dishonoured Premium Cheque...

Payment of premium against policy No. 4534100536 Endt./Cert./Cover note No. 378637 vide cheque No. 0432554 drawn by Shri Mubarak Khan on (Bank) Bank of Baroda, M.Y. Udaipur for amount Rs. 6,957 has been returned to us uncleared for reasons given thereunder as advised by the bank.

1. Refer to drawer--insufficient funds.

2.

3.

Please note that under regulations, we are not on risk in respect of the above policy. In the absence of a valid payment of premium.

Please remit us immediately the premium to enable us to assume the risk subject to your confirmation that there has been no loss so far.

Yours faithfully,

Encl.

sd/-

Duly Constituted Attorney.

14. The said letter clearly indicated that "we are not on risk in respect of the above policy, in the absence of a valid payment of premium. Please remit us immediately the premium to enable us to assume the risk subject to your confirmation that there has been no loss so far".

15. The said dishonour of the cheque was also communicated to the Development Officer, Ziauddin Sheikh, who had obtained the premium vide Exh. D6, and a letter, Exh. D7, dated 2.4.1986 was written to the Regional Transport Officer, Udaipur informing that on account of dishonour of the cheque, the insurance company has cancelled the policy. It is also important to note the contents of the document, Exh. D8, which has raised considerable argument before this court. The said document (Exh. D8) is dated 31.3.1986 and is titled "Motor Refund Endorsement" and the endorsement reads as under:

The said policy is hereby cancelled since inception for the cheque having gone dishonoured.

Our CD entry No. 3 dated 19.3.1986 the Endorsement is being issued for book adjustment only.

16. It has been submitted by the learned counsel for the respondent-claimant that vide Exh. D8, the policy was cancelled and thereafter, the same was never communicated to the insured and, therefore, the insurance company is liable. He also referred to the statement of Daulat Ram Dayma where he had said that policy was cancelled on 31.3.1986. A bare reading of the endorsement reveals that the said endorsement has been made for "book adjustment only" and also relies on the CD entry No. 3 dated 19.3.1986, i.e., the date when notice was issued to the insured about dishonour of cheque. Notice, Exh. D5, was issued to the insured regarding dishonour of cheque. The fact about issue of notice to the insured and receipt thereof by him before the date of accident has been clearly indicated by the Development Officer, Ziauddin Sheikh, in his statement wherein he has clearly stated as under:

Exhibit D-6 ke jariye company ne mujhe suchit kiya va 7 din ka samay respondent No. 1 ko premium jama karane ka diya, exhibit D-6 per C to D mere signature hein. Phir Mubarak Khan se maine sampark kiya ki premium ke paise jama karvaein lekin nahin karai jiske 7 din baad policy cancel kar di.

17. The above statement clearly fortifies the fact about sending of notice to the insured by the insurance company as well as the fact relating to cancellation of policy. Further the fact that the insurance company had vide Exh. D7 specifically informed the Regional Transport Officer vide its letter dated 2.4.1986 that the policy has been cancelled which is at least two days prior to the date of accident which is 4.4.1986 clearly proves that the insurance company had cancelled the policy before the accident took place and the insured was clearly put to notice in this regard. In the case of *Sua Lal Sharma, 2009 ACJ 1686 (Rajasthan)*, the facts of that case were quite glaring, inasmuch as the cheque was dishonoured on 9.10.1992 and the accident took place on the midnight of 8/9.10.1992 and in fact, the insurance company had received cash premium on 9.10.1992 at 4.35 p.m. and it was proved on record that before the accident the insured was not informed about the dishonour of cheque, apparently when the accident occurred on the midnight of 8/9.10.1992 and the cheque was dishonoured on 9.10.1992, i.e., after the accident had happened, there is apparently no possibility of the insurance company informing the insured about dishonour of cheque and, therefore, the said case has no application. The case of *New India Assurance Co. Ltd. Vs. Rula and Others*, also does not help the case of respondent as in that case cancellation of policy for dishonour of cheque took place subsequent to the date of accident.

18. So far as the argument of counsel for appellant relating to non-involvement of the question of law is concerned, whether the insurance company is liable or

not would ordinarily be a question of law in the given facts and circumstances of the case and, therefore, it cannot be said that the present case does not involve any question of law.

19. The result of the above discussion is that on the material available on record it is clearly established by the insurance company that before the accident took place on 4.4.1986, the policy stood cancelled and the owner of the vehicle was informed about the said fact. Therefore, in view of the various pronouncements of the Hon''ble Supreme Court, the insurance company is not liable to pay the compensation to the claimant.

20. The findings recorded by the learned Compensation Commissioner that the insurance company could file a civil suit and recover the amount of premium is wholly beside the point as the contract in absence of consideration fails and, therefore, there is no question of recovery of premium by filing a civil suit. Further the fact that against the order for payment on account of no fault liability, the High Court at the interim stage did not grant any stay cannot have any effect on the final outcome of a litigation and the reliance placed by the learned Compensation Commissioner on the fact of non-grant of stay order by this court is clearly erroneous.

21. When this appeal was admitted by this court an interim order dated 27.11.1995 was passed whereby the award passed by the Workmen's Compensation Commissioner was stayed on the appellant depositing half of the decretal amount and the claimants were permitted to withdraw the amount so deposited by the appellant. If the amount has been deposited by the insurance company and the same has been withdrawn by the claimant, the claimant would not be required to refund back the said amount to the insurance company. However, the insurance company would be entitled to recover the same from the owner of the vehicle Mubarik Khan. So far as argument relating to the liability of insurance company to pay penalty is concerned, in view of the fact that insurance company is held not liable to pay the compensation, the said issue does not require any decision in this case from this court. In the result, the appeal filed by the insurance company is allowed. The judgment and award dated 26.8.1995 passed in W.C. Case No. 26 of 1986 passed by the Workmen's Compensation Commissioner, District Udaipur and Rajsamand is set aside to the extent it holds the insurance company liable to pay the compensation, interest and penalty. The payment, if already made by the insurance company, would not be recovered from the claimants and the insurance company would be free to recover the same from the owner of the vehicle Mubarik Khan, respondent No. 2. The claimant-respondent No. 1 is free to recover the amount of compensation from the said Mubarik Khan, respondent No. 2.

No costs.