
(1999) 11 KL CK 0074
In the High Court Of Kerala
Case No : M.F.A. No. 706 of 1992

New India Assurance Company Limited	APPELLANT
Vs	
Shamsed and Another	RESPONDENT

Date of Decision : 17-11-1999

Acts Referred:

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

Citation : (2001) ACJ 585 : (2000) 100 CompCas 269 : (2000) 1 ILR (Ker) 816 : (2000) 3 RCR(Civil) 216

Hon'ble Judges : P.A. Mohammed, J;G. Sivarajan, J

Bench : Division Bench

Advocate : V.P.K. Panicker, for the Appellant; T.G. Rajendran, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Mohammed, J.—This appeal has been filed by the third respondent, M/s. New India Assurance Company Limited, in O. P. (M. V.) No. 610 of 1989 of the M. A. C. Tribunal, Kozhikode, The main point that arises for decision in this appeal relates to the liability of the appellant to indemnify the owner of the offending vehicle for the compensation awarded by the Tribunal.

2. The claimant filed the above application claiming a total compensation of Rs. 75,000 for the personal injuries sustained by him in the accident occurred on February 27, 1989. The offending vehicle involved in the accident was bus No. KRZ 664 owned by the first respondent and the accident was caused due to the rash and negligent driving of the bus by the second respondent. Respondents Nos. 1 and 2 contested the claim petition denying negligence as alleged. They also objected to the quantum of compensation claimed. The appellant denied the liability to indemnify the owner of the vehicle on the ground that at the time of accident there was no valid insurance inasmuch as the cheque issued by the owner towards the premium on obtaining policy was dishonoured. Subsequently the policy was cancelled on October 21, 1989. The Tribunal after the enquiry

awarded a sum of Rs. 19,950 with 12 per cent, interest as compensation payable to the claimant. On the question of liability, the Tribunal found that the appellant was liable to indemnify the owner though the policy of insurance was cancelled. Being dissatisfied with the above finding, this appeal has been preferred by the insurer.

3. Sub-sections (1) and (2) of Section 64VB of the Insurance Act, 1938, are as follows :

"64VB. No risk to be assumed unless premium is received in advance.--(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer."

The Explanation to this section provides that where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be. In view of this Explanation, we cannot agree to the position that the risk would be covered only on encashing the cheque towards the payment of premium. The bouncing or dishonouring of cheque is a posterior action whereas the posting of the cheque is an anterior action. When the cheque is posted the risk may be assumed and thus the liability to indemnify arises.

4. The counsel for the appellant places reliance on the decision of the Supreme Court in *United India Insurance Co. Ltd. v. Ayeb Mohammed* [1991] 2 ACJ 650. In that case the Supreme Court said 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. The fact that the cheque had bounced was a matter within the knowledge of the insured and hence no special notice to the insured was required. That means the liability of the insurance company ceased to exist.

5. What is contended by the appellant is that in view of the above decision of the Supreme Court there was no liability on the part of the insurer for indemnification since the dishonouring of cheque was within the knowledge of the owner of the vehicle. But this contention is seriously opposed by counsel for the respondents by specifically pointing out that the decision in *United India Insurance Co. Ltd. v. Ayeb Mohammed* [1991] 2 ACJ 650 (SC) had been overruled by a larger Bench of the Supreme Court having three judges in *Oriental Insurance Co. Ltd. v. Inderjit Kaur* [1998] 91 Comp Cas 306 : AIR 1998 SC 588. In this context it would be quite appropriate to know the facts of that case which is similar to the one in hand. A bus met with an accident. Its policy of

insurance was issued by the appellant on November 30, 1989. The premium for the policy was paid by cheque. The cheque was dishonoured. A letter stating that it had been dishonoured was sent by the appellant to the insured on January 23, 1990. The letter claimed that as the cheque had not been encashed, the premium on the policy had not been received and that therefore the appellant was not at risk. The premium was paid in cash on May 2, 1990, and in the meantime- on April 19, 1990, the accident took place. In these factual premise, the Supreme Court considered the submission that in view of the provisions of Section 64VB of the Insurance Act, 1938, the appellant could not in law have assumed any risk under the policy of insurance covering the bus until the premium had been paid. The premium had not been paid inasmuch as the cheque that had been given to the appellant by the insured in payment of the premium, had been dishonoured. The appellant was therefore not at risk and not liable to pay any part of the compensation that had been awarded in view of the decision of the Supreme Court in *United India Insurance Co, Ltd. v. Ayeb Mohammed* [1991] 2 ACJ 650. After analysing also the provisions contained in sections 147(5), 149(1) of the Motor Vehicles Act, 1988, the Supreme Court held that the appellant became liable to indemnify third parties in respect of the liability which the policy covered and to satisfy the award of compensation made by the Tribunal. The court finally observed thus :

"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."

Let us examine the basic facts of the present case which are decisive for solving the problem. The insurance policy was issued on October 5, 1988, on accepting a cheque. The said cheque was dishonoured on October 8, 1988. The accident occurred on February 27, 1989. During the period from the date of issue of the policy till the date of accident the bus was put on road on the basis of the insurance policy obtained from the appellant. These facts would show that the policy was put into operation. It was not cancelled nor was there any alteration or avoidance during this period.

6. The rights of the parties particularly between the owner of the vehicle and third parties had been crystallised. The third parties who are entitled to get benefit out of the policy were not at all affected by the dishonouring of the cheque. To them no doubt it was a valid policy enuring to their benefit notwithstanding the fact that the cheque was dishonoured. In this context it would be apposite to refer to paragraph 10 of the decision of the Supreme Court in *Oriental Insurance Co. Ltd. v. Inderjit Kaur* [1998] 91 Comp Cas 306 : AIR 1998 SC 588 (page 312 of Comp Cas) :

"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 sections 64VB of the

Insurance Act, 1938. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant."

Our attention was also drawn to a decision of the Supreme Court in *G. Govindan Vs. New India Assurance Co. Ltd. and Others*, expounding the paramount intention of the Legislature. This is evident from the following observation (page 450 of Comp Cas) : "In our opinion both under the old Act and under the new Act the Legislature was anxious to protect the third party (victim) interest. It appears that what was implicit in the provisions of the old Act is now made explicit, presumably in view of. the conflicting decisions on this aspect among the various High Courts."

7. When the interest of the third party is protected he can work out his rights on the basis of the certificate of insurance already issued, notwithstanding the fact the such certificate has been cancelled subsequently on the ground of dishonouring of the cheque issued towards the payment of premium. The third party can no doubt take note of the assumption of risk when the cheque is tendered personally or sent by post. There must be certainty and definiteness in so far as the right of the third party victimised in a motor accident on the strength of the certificate of insurance issued by the insurer. The insurer is bound to exercise extreme care and caution in issuing the certificate of insurance. We cannot approve an action on the part of the insurer issuing a certificate of insurance on receiving a cheque and thus allowing the owner to put the vehicle in use and cancelling such certificate at a later stage on dishonouring of the cheque. The insurer cannot create such uncertainties and indefiniteness in issuing the certificate of insurance. Even for such faults, the insurer alone is responsible and the rights of the third party in such situation are well protected by virtue of the provisions contained in sections 147(5) and 149(1) of the Motor Vehicles Act and Section 64VB of the Insurance Act, 1938.

8. In view of what is said above, the contentions raised by the appellant have no merit and they are accordingly rejected. The impugned award is confirmed.

9. Notwithstanding the above, counsel for the appellant submitted that the right of the appellant to proceed against the owner of the vehicle should be preserved. In paragraph 12 of the award the above position has been made clear by observing that the third respondent (appellant) will be entitled to realise the entire amount paid by the appellant in satisfaction of the award from the second respondent, who is the owner of the bus involved in the accident. Inasmuch as we have confirmed the award the above observation of the Tribunal also stands as such. In the result, the appeal is dismissed. No order as to costs.