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**(2022) 02 RAJ CK 0113**

**In the Rajasthan High Court**

**Case No : S.B. Civil Miscellaneous Appeal No. 2781 Of 2011**

New India Assurance Company Ltd

APPELLANT

Vs

Geeta Devi And Others

RESPONDENT

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**Date of Decision : 22-02-2022**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 146(1), 147(1), 147(3), 147(5), 149(1)

**Citation : (2022) 02 RAJ CK 0113**

**Hon'ble Judges : Birendra Kumar, J**

**Bench : Single Bench**

**Advocate : Praveen Jain, Prahlad Sharma**

**Final Decision : Dismissed**

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## **Judgement**

Birendra Kumar, J

### **REPORTABLE**

1. A Truck bearing registration No.RJ-14-2G-2693 met with an accident due to rash and negligent driving of the driver on 23.01.2004. For the accident aforesaid, Mahesh Nagar, Police Station case No.27/2004 was registered. The driver of the Truck namely Mohan Lal Nayak and cleaner of the Truck namely Mr. Ghasi died in the accident. The dependents of the victim of Motor Accident filed separate claim cases. Claim case No. 22/2004 was filed by the dependents of Mohan Lal Nayak and Claim case No. 23/2004 was filed by the dependents of Mr. Ghasi.

2. By the impugned award dated 23.03.2011, the learned Motor Accident Claims Tribunal, Malpura, Tonk, allowed the claim cases and saddled with liability to pay compensation amount against the appellant-New India Assurance Co. Ltd. being insurer of the said Truck. However, liberty was given to the appellant to recover the said amount from the owner of the vehicle. This appeal is against the award made in favour of respondent No.1 to 7, who are dependents of deceased-Ghasi, vide Claim Case No. 23/2004.

3. The appellant has challenged the impugned award only on the ground that since on the date of accident, the Truck was not insured with the appellant, the Tribunal has erred in law and facts in making award enforceable against the appellant also.

4. Undisputed facts of this case for adjudication of aforesaid issue is that on 18.04.2003, a cheque towards payment of premium was presented by Murari Lal Soni, the registered owner of the Truck with the appellant. At that time, the registration Number of the Truck was RND-3792. Subject to realization of the cheque amount, the insurance was renewed for the period of 19.04.2003 to 18.04.2004, covering the date of accident dated 23.01.2004. A copy of the same is Ex.8. The cheque (Ex.A/2) could not be encashed due to insufficiency of the fund. Consequently, on 28.05.2003, the appellant cancelled the policy. The cancellation order is Ex.A4, the relevant portion is being reproduced below:

"Please note that the above mentioned Policy/Collection stands cancelled since inception and we are not on risk in respect of the above Policy & Certificate of Insurance. In case you want to take a fresh insurance please remit us immediately the premium in Cash/DD to enable us to assume the risk from the date of fresh collection subject to your confirmation that there has been no loss so far."

5. The aforesaid cancellation letter was sent to Mr. Murari Lal Soni, however, incorrect name of the owner was mentioned as Murari Lal Saini. In the circumstance, the postal peon returned the cancellation notice with remarks that no person with such name resides at the address. The envelop concerned is Ex.A/5 on the record. The appellant sent the cancellation notice to the Regional Transport Officer vide Ex.A8 only on 01.12.2009 i.e. after the accident.

6. The learned Tribunal took the aforesaid factual position into notice and came to the conclusion that since cancellation of the policy was not communicated properly to the owner due to incorrect mentioning of the name of the owner or to the authority concerned, before the accident, hence, the appellant cannot be absolved of the responsibility to pay to the victims.

7. Another factual development was that on 03.01.2004 i.e. prior to accident, the ownership of the Truck was transferred to respondent No.8-Praveen Kumar Soni. The respondent No.8 got registered and fresh registration number of the Truck was issued as RJ-14-2G-2693. In the claim petition, the registered owner Murari Lal Soni was not a party rather the new purchaser Praveen Kumar Soni was a party.

8. Mr. Praveen Jain, learned counsel for the appellant contends that since the insurance policy specifically stipulated that it would be effective only on receipt of the premium amount and premium amount could not be received, hence, it cannot be treated as contract between the insurer and insured for want of "consideration" in the form of premium. Moreover, the appellant had already cancelled the policy and intimated to the registered owner and sent intimation to

the registered owner prior to the date of accident, hence, in view of the settled legal position, the appellant should not have been held liable to pay compensation. Reliance has been placed on the judgment of the Hon'ble Supreme Court in Deddappa & Ors. Vs. The Branch Manager, National Insurance Co. Ltd. reported in 2008(1) TAC 417, National Insurance Co. Ltd. Vs. Yellamma & Anr. reported in 2008(2) TAC 772 and United India Insurance Co. Ltd. Vs. Laxmamma and others reported in 2012(3) TAC 8.

9. On the other hand, Mr. Prahlad Sharma, learned counsel for the claimant-respondent would contend that right of a third party, who is not the signatory to the contract, rather statutory beneficiary of the contract could not be defeated due to lapses on the part of the parties to the contract. The appellant cannot be absolved, for his inaction in not taking prompt and proper step for cancellation of policy and communication to all concerned to avoid the consequences of no notice, to a third party, of the cancellation. One sided cancellation of the policy vide Ex.A/4 remained un-communicated due to wrong mentioning of name of owner as well as remained non-communicated to the competent authority, before the accident hence, the insurance Company is liable to be estopped from denying his responsibility to cover the risk of the owner of the vehicle.

Reliance has been placed on the judgment of the Hon'ble Supreme Court in New India Assurance Co. Ltd. Vs. Rula and ors. reported in 2000(3) SCC 195 and on the judgment of the High Court of Himachal Pradesh at Shimla in United India Insurance Co. Ltd. Vs. Sandhya Devi and ors., decided on 04.11.2008.

10. The relevant statutory provisions of Section 146(1) Section 147(5) and of Section 149(1) of the Motor Vehicles Act, 1988 regarding necessity of insurance and responsibility of the insurer requires to be noticed which are being reproduced below:

"146. Necessity for insurance against third party risk.

(1) 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 by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

Section 147(5) provides as under:

"(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."

6. 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 person insured in respect of third party risks -

(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 there under, 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. Taking note of the aforesaid provisions, the Hon'ble Supreme Court in Rula's case observed as follows:

"7. The contract of insurance in respect of motor vehicles has, therefore, to be construed in the light of the above provisions. Section 146(1) contains a prohibition on the use of the motor vehicles without an insurance policy having been taken in accordance with Chapter 11 of the Motor Vehicles Act. The manifest object of this provision is to ensure that third party, who suffers injuries due to the use of the motor vehicle, may be able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the injuries.

8. Thus, any contract of insurance under Chapter

11 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. v. Pessumal Dhanama' Aswani & Ors.*, AIR 1964 Supreme Court 1736, 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.

9. It was in the background of the above statutory provisions that the provisions of Section 64VB, upon which reliance has been placed by learned Counsel for the appellant, were considered by this Court in *Oriental Insurance Co. Ltd. v. Inderjit Kaur & ors.*, (1998) 1 SCC 371: 1998 (1) RCR (Civil) 227 (SC), in which it was laid down as under:

"We have, therefore, this position. Despite the bar created by Section 64VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium therefore. By reason of the provisions of Section 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."

12. In Laxmamma's case (supra) wherein Rula's case was also noticed, the Hon'ble Supreme Court stated the legal position in Para No.19 of the judgment as follows:

"19. In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident(emphasis is mine). In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored 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."

13. The ratio of Yellamma is not applicable in the facts and circumstance of this case as in Yellamma's case, cancellation of the insurance cover was already intimated by the Insurance Company to all concerned. In the circumstance, the Hon'ble Supreme Court held that Insurance Company was not liable.

14. In Deddappa's case the identical issue was there as the insurance policy was cancelled due to dishonour of the cheque of premium, however, in that case also communication of the cancellation was made prior to the date of accident.

15. In the present case there is no evidence of the intimation of the cancellation of insurance policy. The case on hand is squarely covered by the law stated in Rula's case (supra). Consequently, this Court is persuaded to affirm the finding of the Tribunal that in absence of communication of cancellation of the Insurance Policy to the owner of the vehicle or to the authority concerned the insurance company cannot be absolved of its responsibility.

16. In United India Insurance Co. Ltd. Vs. Sandhya Devi and ors., the insurance Company had informed to the insurer and financier about cancellation of policy

for non-payment of the premium, however, the Insurance Company did not inform the Registering Authority about the cancellation of policy. The Court held that the Insurance Company is liable to pay compensation to the claimants. Here in no communication of cancellation of policy was made to the Registering Authority before the accident.

17. I do not find any force in the submission of the counsel for the appellant, that since intimation of cancellation was sent to the owner by the appellant, the appellant is not liable to pay the compensation, for the simple reason that intimation must be a valid communication with correct name of the owner. The wrong name and wrong address of the owner cannot be taken as valid compliance of requirement of law. Since there is no evidence of intimation of cancellation of policy to the owner of the vehicle due to lack of correct citation of the name of the owner and there is no evidence of communication of cancellation to the authority concerned specially the registration authority before the date of accident, the appellant cannot be absolved of the responsibility to pay award amount. Therefore, in my view, this appeal is devoid of any merit and accordingly it stands dismissed.