
(2014) 01 CHH CK 0003
In the Chhattisgarh High Court
Case No : M.A. (C) Nos. 706 and 710 of 2010

New India Assurance Company Ltd.

APPELLANT

Vs

Manisha Hirpurkar

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(5), 149, 149(1), 173

Citation : (2014) 3 ACC 205 : (2015) ACJ 1358 : (2015) 2 AnWR 605 : (2014) 2 CGLJ 477

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Raj Awasthi, Advocate for the Appellant; Punit Ruparel, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Sanjay K. Agrawal, J.

1. These appeals [M.A. (C) Nos. 706/2010 and 710/2010] were heard analogously and disposed of by this common order as common question of fact and law are involved and both have arisen out of the one accident. Invoking the appellate jurisdiction of this Court u/s 173 of the Motor Vehicles Act, 1988 (to be referred to as "the M.V. Act") appellant/the New India Assurance Company Limited has filed these appeals questioning the legality and validity of impugned award dated 26th February, 2010 passed by 8th Additional Motor Accident Claims Tribunal, Durg in Claim Case Nos. 110/2008 and 111/2008, by which, claimants' applications have been partly allowed and the appellant/Insurance Company has been directed to indemnify the amount under impugned award and thereafter, recover the same from the owner of the vehicle.

2. The brief facts in nutshell necessary for adjudication of these appeals are as under:

2.1 On 13th November, 2006 Dr. Manisha Hirpurkar and Dr. Sanjay Ingole were

going from Durg to Raipur in Maruti Car bearing registration No. CG-07/0208, when they reached near Ring Road No. 1, a Truck (offending vehicle) bearing registration No. CG-04/J/5094, driven by respondent/driver-Siyaram, owned by respondent/owner-Mohd. Shahid Jamal and insured with appellant/Insurance Company, rashly and negligently, dashed the Maruti Car, by which, claimants suffered grievous injuries. They filed Claim Petition Nos. 110/2008 and 111/2008 before the Claims Tribunal, seeking compensation of Rs. 3,75,000 and Rs. 4,46,000 respectively from owner, driver and insurer of the offending vehicle jointly and severally.

2.2 After service of notice, driver and owner of the offending Truck proceeded ex parte. Appellant/Insurance Company filed his written statement, in which, he raised plea that the insurance policy No. 451800/31/05/01/00015559, dated 1st February, 2006 issued by it covered the risk of said Truck for the period of 1st February, 2006 to 31st January, 2007 was not operative on the date of accident as the premium was paid through cheque No. 106987 and the said premium cheque got dishonoured, which was duly intimated to the owner of the vehicle by cancelling the policy. Therefore, appellant/Insurance Company was not liable to indemnify the impugned award.

2.3 The Claims Tribunal after recording evidence and after hearing the parties held that the policy was cancelled by the Insurance Company before the accident, duly intimated to the owner of the vehicle and the concerned Regional Transport office. It has been further held that firstly, the appellant/Insurance Company indemnify the amount under award, and then, same will be recovered from the owner of the vehicle. The Claims Tribunal in its award dated 26th February, 2010 held that the claimants are entitled for compensation of Rs. 34,671 and Rs. 98,887 along with 6% interest in their respective claim case.

2.4 Feeling dissatisfied with the impugned award, instant appeals have been filed by the appellant/Insurance Company.

3. Mr. Raj Awasthi, learned Counsel appearing for the appellant/Insurance Company would submit that having regard to the undisputed fact that the cheque issued by the respondent/owner of the vehicle towards the premium for insurance of vehicle was dishonoured and thereafter cancellation of policy was intimated to the respondent/owner before the date of accident, the contract of insurance became void and the appellant/insurer could not be compelled to perform its part of promise under the policy. According to Mr. Awasthi, no liability can be fastened on the insurer qua third party as the policy of insurance is rendered void for want of consideration to the appellant/insurer. He would further submit that the finding of the Claims Tribunal that firstly, the appellant/Insurance Company indemnify the amount under award, and then, same will be recovered from the owner of the vehicle is perverse and liable to be set aside.

4. Per contra, Mr. Punit Ruparel, learned Counsel appearing for the respondent No. 3/owner would submit that cancellation of the policy covering the risk of

offending vehicle was not ever intimated to owner of the vehicle, therefore, appellant/insurer cannot disown its liability and learned Claims Tribunal is absolutely justified in directing the appellant/insurer to indemnify the compensation amount.

5. I have heard learned Counsel appearing for the parties and perused the award impugned including records of the Claims Tribunal carefully.

6. The short question that falls for consideration is whether the learned Claims Tribunal is justified in holding the appellant/insurer is liable to satisfy the amount under impugned award first and then to recover the same from respondent/owner of vehicle.

7. The respondent/owner issued a cheque No. 106987 of Rs. 30,123 dated 1st February, 2006 to the Insurance Company for issuance of policy. Appellant/insurer on receipt of aforesaid cheque, a motor vehicle policy No. 451800/31/05/01/00015559 was issued to the owner covering risk of motor vehicle i.e. offending vehicle (Truck) in question. The said insurance policy shows that the policy issued on 1st February, 2006, covering the risk of the offending vehicle for the period of 1st February, 2006 to 31st January, 2007, in which, it has clearly been mentioned that "warranted that in case of dishonour of premium cheque, this document stands automatically cancelled ab initio."

8. The cheque No. 106987 of Rs. 30,123 dated 1st February, 2006 vide Exhibit D/1-C, issued by the respondent/owner against the policy was dishonoured by the Bank and Bank by its memo dated 4th February, 2006 and 6th February, 2006 vide Exhibits D/2-C and D/3-C intimated the appellant/insurer that aforesaid cheque No. 106987 issued by owner has returned on account of "Not Sufficient Fund". The Insurance Company vide its letter Exhibit D/4-C dated 7th February, 2006, intimated the respondent/owner that the cheque No. 106987 dated 1st February, 2006 for Rs. 30,123 drawn on Vyavasayik Sahakari Bank Ltd., Branch-Chhota Para, Raipur towards premium against policy No. 451800/31/05/01/00015559 is dishonoured and thereby policy has been cancelled, which was sent by registered post on 5th April, 2006 vide Exhibit D/6-C Insurance Company by its letter Exhibit D/5-C dated 7th February, 2006 and registered post-dated 5th April, 2006 (Exhibit D/7-C) also intimated to Regional Transport Office, Raipur cancellation of policy No. 451800/31/05/01/00015559. Registered Postal receipt have been filed vide Exhibits D/6-C and D/7-C and duly proved by appellant/insurer.

9. Mr. Mukundram [NAW-3(1)], witness of New India Assurance Company Limited has been examined, he has stated that policy issued by the appellant/Insurance Company bearing No. 451800/31/05/01/00015559 was cancelled on account or dishonour of the cheque of Rs. 30,123 drawn by the respondent/owner of the vehicle. He explained in the course of his examination that policy was issued to the respondent/owner for covering the risk of vehicle in question. He further deposed that as per policy, in case of dishonour of premium cheque (S), the

policy stands automatically cancelled, and has admitted that by memo dated 7th February, 2006 which was sent through registered post dated 5th April, 2006 the fact of cancellation of the said policy No. 4518000/31/05/01/00015559 has been communicated to the owner of the vehicle.

10. Thus, on the basis of the pleadings and evidence on record, the following facts would emerge:

(i) Cheque No. 106987 dated 1st February, 2006 for Rs. 30,123 was issued by the respondent/owner in favour of the appellant/insurer as premium for issuance of policy.

(ii) Against the said premium amount, policy was issued to the owner of the vehicle for covering the risk of vehicle in question.

(iii) The premium cheque dated 1st February, 2006 became dishonoured on 4th February, 2006. The appellant/insurer intimated the owner about dishonour of aforesaid cheque of Rs. 30,123 and cancellation of policy by a registered post dated 5th April, 2006.

(iv) The vehicle in question suffered accident occurred on 13th November, 2006 after 222 days of intimation of the dishonour of cheque/cancellation of policy.

11. Admittedly, the Insurance policy clearly provides a condition that in case of dishonour of the premium cheque, insurance policy stands automatically cancelled ab initio, in the instant cases, cheque dated "1st February, 2006 was dishonoured on 4th February, 2006 on account of "Not Sufficient Fund" and dishonour of the cheque was informed to the respondent/owner of vehicle by memo dated 7th February, 2006 which was sent through registered post dated 5th April, 2006 stating that aforesaid cheque has been dishonoured and the policy No. 451800/31/05/01/00015559 has been cancelled.

12. Thus, it appears from the record and evidence of Mukundram [NAW-3(1)] that the policy dated that the policy date 1st February, 2006 has been cancelled and intimated on 5th April, 2006 by registered post to the owner of the vehicle and concerned Regional Transport Officer.

13. Thus. The finding of the Claims Tribunal that firstly, the appellant/Insurance Company to indemnify the amount under award and then, same will be recovered from the owner of the vehicle is perverse and liable to be set aside.

14. This takes me to next question, that whether appellant/insurer can be held liable to satisfy the third party, even though the policy covering the vehicle in question has been cancelled.

15. In case of Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., , the Supreme Court has held that the cheque issued for covering vehicle in question was dishonoured by communicating to the owner of the vehicle and accident occurred after the cancellation of policy. It has further held that if the contract of insurance cancelled, then, Insurance Company would not

be liable to satisfy the claim towards third party. Para 24 reads thus:

"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 contraction 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."

16. In case of United India Insurance Co. Ltd. Vs. Laxmamma and Others, , Supreme Court after considering its earlier judgments in cases of Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, ; National Insurance Co. Ltd. Vs. Seema Malhotra and Others, and Deddappa (supra), has held 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 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, and observed in para 19 as under:

"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 MV Act unless the policy of insurance is cancelled by the authorized 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 authorized 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."

17. In the instant cases, indisputably, on dishonour of the cheque, policy stood automatically cancelled as provided in the contract of Insurance and dishonour of premium cheque issued for covering the motor vehicle in question and cancellation of policy was duly communicated to the respondent/owner vide registered post dated 5th April, 2006 and the accident occurred on 13th November, 2006. Therefore, applying the ratio of law laid down by the Supreme Court in the cases referred hereinabove, particularly in Deddappa (supra), to the facts and circumstances of the present cases, it is apparent that the learned

Claims Tribunal has committed manifest legal error in fastening the liability Upon the appellant/Insurance-Company to indemnify the amount under the impugned award. I hold that the appellant/Insurance Company is not liable to indemnify the amount under award and only respondent/owner of the vehicle is responsible to make payment of the compensation under the impugned award. Thus, the impugned award stands modified to the extent indicated hereinabove. The amount, if any, deposited and withdrawn by claimants, the appellant/insurer will be entitled to recover the same from insured/owner and claimants would be entitled to recover the award amount from owner/insured. Resultantly, the appeals (M.A.(C) Nos. 706/2010 and 710/2010) are allowed in part. The appellant/insurer is not liable to indemnify the amount under award. Rest of conditions mentioned in the award shall remain intact.

No order as to costs.