
(2012) 10 DEL CK 0266
In the Delhi High Court
Case No : MAC. App. 1100 of 2011

New India Assurance Company Ltd.

APPELLANT

Vs

Smt. Rekha Devi and Others

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

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

Citation : (2013) ACJ 1686

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

Bench : Single Bench

Advocate : Anand Vardhan Sharma, for the Appellant; P.N. Jha, With Mr. A.K. Upadhyay, for R-1 to R-5, for the Respondent

Final Decision : Allowed

Judgement

G. P. Mittal, J.—The Appellant New India Assurance Company Limited takes exception to the judgment dated 12.09.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding compensation of Rs. 10,42,768/- in favour of the legal heirs of deceased Ram Kishore for his death in a motor vehicle accident which occurred on 02.04.2008, the Appellant Insurance Company was made liable to pay the compensation and to recover the same from the insured. The Appellant's grievance is that since the insured was immediately informed about the dishonour of cheque and an intimation in this regard was also sent to the RTO, it had no liability to pay the compensation to the Claimants even in the first instance. The relevant findings of the Claims Tribunal is extracted hereunder:-

15 The insurance company has raised the defence that the vehicle was not insured when the accident occurred due to cancellation of policy. In this respect, the witness, R3W1 Shri Hari Chand has relied upon the notice issued to owner, Vijay Pal as well as to RTA. He has also placed on record the original cheque, Ex. R3W1/A, covering advise as Ex. R3W1/B and the letter posted along with the

postal receipt sent to the owner, Vijay Pal as Ex. R3W1/C collectively. The original cancellation is also exhibited as Ex. R3W1/D. In the circumstances above, having regard to the judgment of Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, , wherein the Apex Court has clearly laid down that the insurance company cannot be permitted to avoid its liability qua the third party as the insurance itself is liable for its predicament for having issued the policy of insurance upon receipt of a cheque towards premium in contravention to the provisions of Section 64(5)(b) of Insurance Act. Having regard to the public interest, that a policy of insurance serves must clearly prevail over the interest of the insurance company, I direct that the amount of award be satisfied by the insurance company after deducting the amount towards the interim award paid already with the right to recover the same from the owner as he has clearly failed to prove the factum of dishonouring of the cheque was not informed to him by his bankers at any such and/or that the vehicle was covered under any provision whereby award to the liability qua any insurance company, can be sought. In such circumstances, it is ordered that the burden of the award amount shall be borne by the insurance company.

2. This case is squarely covered by the Supreme Court judgment in Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., ; where the Supreme Court considered the judgments in Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, & New India Assurance Co. Ltd. Vs. Rula and Others, and held that if an insurance policy is cancelled on account of dishonour of cheque and the Insured as well as the RTO are informed about the same, the third party would not be entitled to get the compensation from the Insurance Company as they are liable only so long as the policy subsists.

3. Relying on Deddappa, the Supreme Court in its latest judgment in United India Insurance Company Limited v. Laxmamma & Ors., (2012) 5 SCC 234 held as under:-

26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the 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 authorised 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 authorised 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.

4. Thus, if the Insurance Company cancelled the policy and informed the insured as also the RTO before the accident of the vehicle, it had no liability.
5. In the instant case, the Appellant examined R3W1 Harichand, its Senior Divisional Manager. He proved that the cheque Ex. R3W1/A was dishonoured on presentation. The return memo was proved as R3W1/B. Notice sent to the insured and the RTO was proved as Ex. R3W1/C along with the postal receipt for dispatching it through speed post. The endorsement of cancellation was proved as Ex. R3W1/D. In fact, this was all what was required to be done as per Deddappa and Laxmamma. Thus, Insurance Company had no liability to satisfy the award even in the first instance.
6. The impugned judgment in so far as it made the Insurance Company liable to pay the compensation in the first instance cannot be sustained. The impugned judgment is set aside to that extent.
7. The Claimants shall be entitled to recover the compensation from the driver and owner of the offending vehicle, that is, Respondents No. 6 and 7, herein.
8. The Appeal is allowed in above terms.
9. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company. Pending Applications also stand disposed of.