
(2005) 11 MP CK 0076
In the Madhya Pradesh High Court

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Mahesh Prasad Rawat and Others		RESPONDENT

Date of Decision : 25-11-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147, 149, 163A

Citation : (2007) ACJ 1142 : (2006) 2 MPLJ 145

Hon'ble Judges : B.M. Gupta, J;Arun Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.

This appeal has been preferred by Oriental Insurance Co. Ltd. aggrieved by an award dated 10.5.2001 passed by Second Additional Member, M.A.C.T., Bhopal in MCC No. 64 of 1998. Claimants have also filed cross-objections for enhancement of compensation.

In short the claimants' case is that on 16.8.1996 Sandhya was travelling in jeep No. MP 04-A 5157, when it reached near Bhanpura police check post, bus No. MP 04-H 7445 dashed the jeep, bus was driven at excessive speed, Sandhya, driver and other sustained injuries. Sandhya was taken to Padar Hospital for treatment where she died. Autopsy was performed on 17.8.1996. Bus was driven by Mohd. Umar. Age of deceased was 35 years. She was unmarried. She was hale and hearty. She had decided not to marry. She was the only daughter of claimants. She was working as Assistant Instructor in Aaganwadi Centre, earning Rs. 1,300 per month. She was obtaining other facilities also. In addition she used to do the work of handicraft and stitching, in all her income was Rs. 4,000 per month. Compensation of Rs. 8,20,000 was claimed along with interest.

Jeep was owned by Mahila Chetna Manch, Bhopal and insured with New India Assurance Co. Ltd. for the period 21.3.1996 to 20.3.1997.

Respondent Nos. 1 and 2 have not filed any written statement. Oriental Insurance Co. Ltd., in the reply contended that bus was not insured. The policy which was issued, was cancelled owing to the dishonour of the cheque; the drivers were not having the driving licence, as such, insurer of the bus was not liable to make the payment of compensation.

Respondent Nos. 4 and 5 in their reply contended that jeep was driven by the driver safely. The jeep was insured with New India Assurance Co. Ltd. Liability, if any, is that of New India Assurance Co. Ltd.

New India Assurance Co. Ltd. in the reply contended that jeep was not insured, as such, there is no liability to make the payment of compensation. There was no report lodged against the driver of the jeep. Driver of the bus was negligent.

Respondent No. 7, M.P.S.R.T.C. has contended that only bus was plied on the route reserved for M.P.S.R.T.C, other liabilities are that of owner of the bus, hence, it is not liable to make the payment of compensation.

The Claims Tribunal has found that bus was driven in a rash and negligent manner. Driver of the jeep was not negligent. Sandhya died owing to the injuries sustained in the accident. Compensation of Rs. 1,36,800 has been awarded along with interest at the rate of 9 per cent per annum from the date of filing of claim petition. Liability has been saddled on the owner, insurer of the bus and M.P.S.R.T.C.

Mr. S.K. Rao, learned senior counsel with Mr. Ajit Agrawal for the appellant insurer, has submitted that policy which was issued, was cancelled owing to the dishonour of the cheque. Since the policy was cancelled, liability could not have been saddled upon the insurer to make the payment of compensation, hence, insurer be exonerated from making payment of compensation.

In the cross-objections filed by the claimants, it is submitted that inadequate compensation has been awarded. Income has been assessed on lower side. Prayer has been made to enhance the compensation.

Accident took place on 16.8.1996. The bus was owned by Mohd. Iqbal and insured with Oriental Insurance Co. Ltd. The Tribunal has found that policy, Exh. D2, was issued on 29.11.1995. It was to be effective till 25.11.1996. It was the case set up by the insurer that intimation of cancellation of policy, Exh. D3, was sent on 29.12.1995, however, the receipt of sending aforesaid notice of cancellation could not be produced by the insurer. The acknowledgment of such receipt of notice of cancellation is not on record. It was mentioned in the notice, Exh. D3, that it was to be sent by registered acknowledgment post, however, admittedly it was not sent by registered A.D. but by courier, of which no documents have been placed on record, thus, the Claims Tribunal has found that policyholder was not informed about the dishonour of the cheque and the cancellation of the policy, as such insurer is bound to make the payment of the amount of insurance, vis-a-vis to third party the insurer cannot escape the

liability owing to the inter se dispute between insurer and insured. In *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others*, , it has been laid down that once a policy has been issued in respect of third party risk, even without receiving the premium, insurer becomes liable to indemnify third party, the decision in *United India Insurance Co. Ltd. v. Ayeb Mohammed* 1991 ACJ 650 (SC), was overruled by the Apex Court. The Apex Court has held that once policy has been issued, by reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, 1988 the insurance company became liable to indemnify third party liability in respect of liability which that policy covers and to satisfy the awards of compensation in respect thereof. The Apex Court in *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others*, , held:

(7) Chapter 11 of the Motor Vehicles Act, 1988, provides for the insurance of motor vehicles against third party risks. Section 146 thereunder states that 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 a policy of insurance that complies with the requirements of the Chapter. Section 147 sets out the requirements of policies and the limits of liability. A policy of insurance, by reason of this provision, must be a policy which is issued by a person who is an authorised insurer. Sub-section 5 reads thus:

(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.

Section 149 refers to the duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. Sub-section (1) thereof reads thus:

(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 thereunder, 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.

(8) 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 therefor. By reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, 1988, 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.

(10) We may note in this connection the following passage in the case of *Montreal Street Railway Co. v. Normandin* AIR 1917 PC 142:

When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

(11) 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 Section 64VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant.

In *New India Assurance Co. Ltd. Vs. Rula and Others*, (SC), the Supreme Court has laid down that once insurance policy has been issued on dishonour of the cheque, insurer cannot escape the liability. Similar is the view taken by this court in *Gaura Bai and Others Vs. Dev Nath Makad and Others*, .

In *National Insurance Co. Ltd. Vs. Seema Malhotra and Others*, , the Apex Court has laid down that once policy has been cancelled, intimation was given, the insurer cannot be held liable, what is the essence is that cancellation and its information on dishonour of cheque. In the instant case, the cancellation even if made was not notified to the insured, no document has been adduced to show that cancellation was ever notified. In our opinion, with respect to third party, it is for insurer and insured to settle the inter se dispute between themselves.

Coming to the question of cross-objections we find that the compensation which has been awarded on account of death of Sandhya, aged 35 years, is inadequate. She was an Assistant Instructor in Aaganwadi Centre. In addition, she used to do the other works. Income was claimed to be Rs. 4,000 per month. We assess from all sources her income at Rs. 2,000 per month. Rs. 1,300 she was earning as salary on the post of Assistant Instructor. Thus, the annual income comes to Rs. 24,000. 1/3rd amount is deducted towards self expenditure of the deceased which she would have spent on herself, had she been alive, thus, loss of dependency comes to Rs. 16,000 per annum. She was unmarried and supporting the parents is also apparent. At the age of deceased, multiplier of 17 is

applicable, however, as the parents are claimants, with due regard to their age, we apply the multiplier of 13, thus the compensation on account of loss of dependency comes to Rs. 2,08,000 (Rs. 16,000 x 13). In addition, the claimants are entitled for a further sum of Rs. 2,000 on account of funeral expenses, Rs. 2,500 on account of loss to the estate, Rs. 5,000 on account of loss of expectancy of life. Total compensation comes to Rs. 2,17,500 (rupees two lakh seventeen thousand five hundred). The compensation enhanced by us shall carry interest at the rate of 6 per cent per annum from the date of filing of claim petition.

Resultantly, the appeal filed by the insurer is dismissed. The cross-objections are allowed in part. Parties to bear their own costs as incurred of this appeal.