

(2005) 09 KL CK 0028
In the High Court Of Kerala
Case No : M.F.A. No. 661 of 2002

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Sivankutty

RESPONDENT

Date of Decision : 08-09-2005

Acts Referred:

Insurance Act, 1938 — Section 64VB

Motor Vehicles Act, 1939 — Section 94, 96

Motor Vehicles Act, 1988 — Section 145, 146, 146(1), 147(1), 147(3)

Citation : (2005) 4 ACC 653 : AIR 2006 Ker 20 : (2005) 4 ILR (Ker) 150 :
(2006) 1 JCR 395 : (2005) 4 KLT 108 : (2006) 1 RCR(Civil) 410

Hon'ble Judges : Thottathil B. Radhakrishnan, J;R. Bhaskaran, J;K.P. Balachandran, J

Bench : Full Bench

Advocate : Mathews Jacob, for the Appellant; T.R. Ramachandran Nair, for the Respondent

Judgement

K.P. Balachandran, J.—The interesting question of vast legal importance which comes up for consideration before us upon a reference by a Division Bench is the following: --

"Whether the insurer is liable to pay compensation to the injured in a motor vehicle accident even if it has cancelled the policy issued in relation to the offending vehicle for non-payment of premium, (the cheque issued towards payment of premium having been dishonoured) in respect of accident that has taken place within the period specified in the policy but that has taken place after the cancellation?"

2. The Referring Bench was of the view that the principles laid down by a Division Bench of this Court in *New India Assurance Co. Ltd. v. Raghu* (2001 (3) KLT 515) required reconsideration by a larger bench on analysing the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, 1988 in the light of the decisions of the Apex Court in *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur* and

Others, and New India Assurance Co. Ltd. Vs. Rula and Others, .

3. The appellant is the third respondent Insurance Company and the respondents are the petitioner and respondents 1 and 2 in O.P.(MV)490 of 1992 on the file of the Motor Accidents Claims Tribunal, Pathanamthitta. Reference to the parties are hereinafter made with reference to their status before the Tribunal.

4. The petitioner was passenger in stage carriage bus "Sheeba" bearing Registration No. KLB 9666 plying along Ranni-Erumeli route on 23.12.1991. At Ranni junction, the offending lorry bearing Regn.No. KRO 5405 which was coming in the opposite direction hit the said bus resulting in injuries and fracture being caused to the petitioner. The first respondent was the owner and the second respondent was the driver of the said lorry. The third respondent Insurance Company had issued Ext.B8 policy of insurance in relation to the said lorry on 4.11.1991 for the period from 5.11.1991 to 4.11.1992. But consequent on dishonour of Ext.B1 cheque issued by the first respondent towards payment of premium, the third respondent vide Ext.B3 letter dt.19.11.1991 informed the first respondent of the dishonour of the cheque and thereafter by Ext.B6 notice dt.29.11.1991 issued to the first respondent, cancelled the policy under intimation to the R.T.O, vide Ext.B4 of the same date. It is thereafter on 23.12.1991 that the accident involved in this case has taken place. Additional respondents 4 to 6 were the owner, driver and insurer of the bus involved in the accident and they remained ex parte.

5. The Tribunal found on evidence that the accident has occurred solely on account of the negligence of the second respondent driver of the lorry bearing Regn.No. KRO 5405 owned by the second respondent and in relation to which the third respondent Insurance Company had issued Ext.B8 policy of insurance covering period from 5.11.1991 to 4.11.1992. The compensation payable to the petitioner the injured in the accident was assessed at Rs. 2,22,000/-. The second respondent driver was held primarily liable in damages for his negligence, the first respondent owner was held vicariously liable and the third respondent Insurance Company was found liable to pay the compensation awarded despite cancellation by them of Ext.B8 policy of insurance relying on the decisions of the Apex Court in Oriental Insurance Co. Ltd. v. Inderjit Kaur and Ors. (1998 (1) KLT23 : AIR 1998 SC 588) and in New India Assurance Co. Ltd. Vs. Rula and Others, and of a Division Bench of this Court in New India Assurance Co. Ltd. v. Shamsed (2000 (2) KLT 67) but with right to recover the amount so paid in satisfaction of the award from the first respondent owner of the lorry by reason of provisions in Sections 147(5) and 149(4) of the Motor Vehicles Act, 1988.

6. It is in the appeal filed by the third respondent Insurance Company challenging the said award that the question of law involved as aforesaid has been referred to the Full Bench for an authoritative pronouncement.

7. Section 146(1) of the Motor Vehicles Act 1988 in Chapter XI mandates 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 by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

8. Ext.B8 is the original certificate of insurance copy of which is Ext.B7 and is dated 4.11.1991. Section 145(d) defines "policy of insurance" as inclusive of a certificate of insurance. Section 145(b) defines "certificate of insurance" as under:

"certificate of insurance" means a certificate issued by an authorised insurer in pursuance of Sub-section (3) of Section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be:"

But in the case of a "cover note" Section 147(4) makes a distinction that it has to be followed by a policy of insurance within the prescribed time. However in the instant case there is no dispute that Ext.B8 is the policy of insurance/certificate of insurance issued under Sub-section 3 of Section 147 of the Motor Vehicles Act. The other relevant sections which has application and calls for consideration to answer the reference are Sections 147(5) and 149(1) of the Motor Vehicles Act, 1988 and those are extracted below for easy reference:

"147. Requirements of policies and limits of liability

(1)....

XXX XXX XXX (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".

149. Duty of insurers to satisfy judgments and awards against persons 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 persons 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".

(emphasis supplied)

9. The earliest decision of the Apex Court as regards the liability of the Insurance Company in cases of motor insurance covering third party risks when cheque issued towards payment of premium is dishonoured was in *United India Insurance Co. Ltd. v. Ayeb Mohammed* (1992 (1) KLT 22 : 1991 ACJ 650). In the said decision the Apex Court held 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". Thus the insurer's stand that the cheque covering the premium having bounced and in the absence of payment of premium the cover note had become ineffective and there was no policy which obliged the insurer to pay the compensation was upheld. The said decision was overruled by a three member Bench of the Apex Court in *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others*, . That was a case where policy of insurance was issued by the appellant Insurance Company on 30.11.1989. The premium for the policy was paid by cheque. The cheque was dishonoured. Letter intimating such dishonour and disowning of risk was sent to the insured on 23.1.1990. Thereafter premium was paid by cash on 2.5.1990. In the meanwhile on 19.4.1990 the accident had taken place which gave rise to the claim for damages. The Apex Court after considering the provisions in Chapter XI of the Motor Vehicles Act, 1988 which provides for insurance of motor vehicles against third party risks viz. Sections 146, 147(5) and 149(1) held in paragraphs 7 and 8 as follows:

"7. We have, therefore, this position. Despite the bar created by Section 64-VB 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 Sections 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 award 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.

8. 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 obligation to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured".

10. A Division Bench of this Court in *New India Assurance Co. Ltd. v. Shamsed* (2000 (2) KLT 67) relied on the decision of the Apex Court in *Inderjit Kaur's* case (referred to supra) and held Insurance Company liable to pay the compensation for injury sustained to third party in an accident that occurred on 27.2.1989 after cancellation of policy on 21.10.1988 for reason of dishonour of cheque issued towards payment of premium but reserving the right of the insurer to recover the amount so paid from the owner of the vehicle involved in the accident.

11. The Apex Court in *New India Assurance Co. Ltd. Vs. Rula and Others*, held, following the decision in *Inderjit Kaur's* case that the insurer is not absolved of liability to third party if the cheque issued towards payment of premium is

dishonoured and policy is cancelled after accrual of liability; that payment of premium is not the concern of third party and that subsequent cancellation of policy due to dishonour of cheque would not affect the rights of third party. That was a case where the issuance of policy was receiving cheque towards payment of premium and occurrence of accident was on the same day viz. on 8.11.1991 and the dishonour of the cheque was thereafter on 16.11.1991. The argument advanced by the learned Counsel for the appellant that the Apex Court in the said decision held only that subsequent cancellation of policy on ground of nonpayment of premium would not affect the rights already accrued and that the position would be different if the accident occurred after cancellation is not of any merit in view of the decision in *Inderjit Kaur's* case where the accident was subsequent to dishonour of cheque and issuance of letter disowning liability for risk.

12. It is worthy to bear in mind that Chapter XI of the Motor Vehicles Act, 1988 makes insurance of motor vehicles against third party risks compulsory and no vehicle can be put on the road without a valid policy of insurance covering risks that may occur to third parties out of use of such motor vehicle. The Insurance Company while issuing policy of insurance receiving cheque towards premium, enables the owner of the motor vehicle to ply the motor vehicle on the public roads. Whether the cheque is cashed and if not whether the policy is cancelled are all matters within the knowledge of the contracting parties namely insurer and insured. The menace caused to the general public by the Insurance Company enabling the use of such motor vehicles by issuance of policy of insurance is however not abated by their cancelling the policy behind the back of the beneficiaries who are the public at large in as much as the policy without any endorsement of cancellation remains in the possession of the insured who can continue to use the vehicle on the strength of the said policy till the period shown therein expires without any impediment in the use of the vehicle being caused by the authorities concerned. It is apposite to remember the observations of the Supreme Court in paragraph 10 of the decision in *Inderjit Kaur's* case. The Apex Court observed:

"10. 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 64-VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant".

13. The Apex Court has laid much stress on the need to interpret the provisions of the Motor Vehicles Act which is a beneficial legislation, in a meaningful manner in *United India Insurance Company Ltd. Vs. Lehu and Others*, , while rejecting the defence of the Insurance Company built on the exclusion clause in Section 149(2)(ii) of the Motor Vehicles Act, The Supreme Court in paragraph 12 of the said judgment quoted with approval the observations made by that Court in paragraph 13 of the judgment in *Skandia Insurance Co. Ltd. Vs. Kokilaben*

Chandravadan and Others, . The said observation is as follows:

"13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third-party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third-party risk by enacting Section 94? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third-party insurance is in force. To use the vehicle without the requisite third-party insurance being in force is a penal offence. The legislature was also faced with another problem. The insurance policy might provide for liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the insurance company to satisfy the judgment obtained against the persons insured against third-party risk (vide Section 96). In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance policy covering third-party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of

money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the twilight of the aforesaid perspective".

14. Sections 146 and 149 of the 1988 Act corresponds respectively to Sections 94 and 96 of the 1939 Act.

15. Thus by no means can an insurer who has issued a policy of insurance for a motor vehicle receiving cheque towards payment of premium be allowed to disown liability to third party. Their remedies have to be worked out against the insured.

16. A Division Bench of the Indore Bench of the Madhya Pradesh High Court also in Ishwar Singh Agrawal Vs. Ashok Kumar Garg and Others, has held considering Sections 147(5) and 149(1) of the Motor Vehicles Act, 1988 and Section 64-VB of the Insurance Act 1938 that dishonour of cheque after issuance of certificate of insurance which includes cover note, does not affect the rights of third party and that the Insurance Company can recover the amount from the insured. That was a case where accident occurred on the very next day of issuance of cover note by the Insurance Company, receiving cheque towards payment of premium and the cheque was dishonoured thereafter.

17. The decision of the Apex court in National Insurance Co. Ltd. Vs. Seema Malhotra and Others, relied on by counsel for the appellant has no application at all to the facts of this case as what arose for consideration therein was the question of tenability of the claim of the legal representatives of the insured against the insurer for compensation for damage to the vehicle insured, when the cheque issued towards payment of premium was dishonoured and consequently the insurance was cancelled. That does not stand on a par with liability in damages to third parties.

18. The decision of this Court in New India Assurance Co. Ltd. v. Raghu (2001 (3) KLT 515) is rendered after referring to the decision of the Apex Court in Inderjit Kaur's case (1998 (1) KLT (SC) 23 : AIR 1998 SC 588) and in New India Assurance Co. Ltd. Vs. Rula and Others, . But the observation in paragraph 13 of the decision in Rula's case rendered by a two member bench was given undue importance to hold that for accidents which occurred after cancellation of policy, the Insurance Company would have no liability. The relevant portions in paragraph 13 of the judgment so relied on is as follows:

"The subsequent cancellation of the insurance policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the insurance of the policy on the date on which the accident took place. If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the

third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party".

19. It has to be remembered that the Supreme Court made the above observations while appreciating the facts in that particular case accepting and following the decision in Inderjit Kaur's case (1998 (1) KLT (SC) 23 : AIR 1998 SC 588) in which it was laid down that despite the bar created by Section 64-VB of the Insurance Act, the authorised insurer who issued policy of insurance to cover the bus without receiving the premium thereof, became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy the awards of compensation in respect thereof by reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, notwithstanding its entitlement to avoid or cancel the policy for the reason that a cheque issued in payment of premium thereon had not been honoured.

20. Neither from the three member decision of the Apex Court in Inderjit Kaur's case (1998 (1) KLT (SC) 23 : AIR 1998 SC 588) nor from the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, 1988 do we get any support to hold the view that the liability to pay compensation for injuries sustained to third parties ceases to exist after the cancellation of the policy. The situation is not akin to that of an owner of a vehicle not having taken any insurance at all for the vehicle as on the date of the accident, as is observed by the Division Bench of this Court in New India Assurance Co. Ltd. v. Raghu (2001 (3) KLT 515). We therefore hold that the decision of the Division Bench of this Court in New India Assurance Co. Ltd. v. Raghu (2001 (3) KLT 515) does not lay down the correct law. The position is that the liability of the Insurance Company in damages for third party risks continues for the entire period covered by the policy in spite of the cheque issued towards payment of premium was dishonoured and consequently policy was cancelled by the Insurance Company. The remedy of the Insurance Company lies against the "insured" to have the amount paid by them by way of compensation for third party risks to be got reimbursed.

The reference is answered as above. The Registry shall appropriately place the file before the Referring Bench along with the answer on the Reference for further appropriate action in the matter.