(2012) 02 DEL CK 0242

In the Delhi High Court

Case No : MAC. App. 455 of 2004

Oriental Insurance Co. Ltd. APPELLANT

Vs

Usha and Others RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 50, 50(2)

Citation : (2013) 1 ACC 13

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

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant; S.P. Verma, for R-1 to R-5 and Mr. Ashutosh Lohiya, for R-6 to R-7, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Oriental Insurance Company Limited impugns the judgment dated 09.08.2004 on the ground that it was wrongly saddled with the liability to pay the compensation as the Insurance policy had been cancelled by a letter dated 21.12.2001 before the accident which took place on 01.01.2002. A compensation of Rs. 6,26,600/- was granted in favour of the Respondents No. 1 to 5 for the death of Bhojraj who was aged about 41 years and was working as an Electrician at the time of the accident.

2. I would not go into the question of negligence and the amount of compensation as by order dated 27.10.2004 notice was issued only to owner and the driver of the offending vehicle to grant the Appellant the right to recover from them the compensation awarded in case the Insurance Company succeeded in the Appeal. It is not in dispute that a new motor car (Maruti Zen) No. DL-4CQ-0593 was purchased by Mahavir Singh and a cover note No.271455 and an Insurance policy 31/2001/6884 for comprehensive coverage was issued by the Appellant Oriental Insurance Company Limited.

3. The Appellant''s plea is that cheque number 257150 Ex.R3W1/B dated

08.12.2001 given as premium for the insurance was dishonoured on presentation to the bank by a Return Memo Ex.R3W1/C dated 13.12.2001. By a letter dated 21.12.2001 Ex.R3W1/D the policy was cancelled and intimation was given to the owner (Mahavir Singh) by postal receipt Ex.R3W1/E. Intimation in this regard was also sent to the concerned RTO. It is thus submitted on behalf of the Appellant that in view of the judgment in Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., ; when the contract of insurance stood rescinded the Appellant Insurance Company had no liability to pay the compensation even to the third party. It is urged that since the notice was issued limited to the recovery rights and the compensation has been paid in terms of the order dated 27.10.2004, the Insurance Company is entitled to recover the amount paid along with interest.

4. On the other hand, it is contended by the learned counsel for the owner and the driver that a fraud was played upon the owner by the Agent of the Insurance Company and the Financer. The owner paid the premium to the Financer in cash. He had no relation with Poonam whose cheque was issued to the Appellant Insurance Company towards the payment of premium and thus, the Owner/ Respondents No.7(a) to 7(c) (Legal Representatives of Mahavir Singh) cannot be saddled with the liability to pay the compensation. Learned counsel for the Respondents 6 and 7 in support of his contention referred to the owner''s testimony, who entered the witness box as RW-1.

5. It would be fruitful to refer to the evidence of Mahavir Singh (RW-1), the owner of the offending vehicle and J.L. Madan (R3W1), Senior Assistant, Oriental Insurance Company Limited.

6. Mahavir Singh deposed that he was the registered owner of Maruti Van No.DL-4CQ-0593 (the offending vehicle). He subscribed the policy of insurance through the agent of the Finance Company. The name of the said Agent was Raju. He paid consideration of Rs. 40,000/- in cash towards installment for purchase of the van including the insurance premium. Remaining amount was to be paid by way of monthly installment of Rs. 7284/- from his account. He deposed that there was no person by the name of Poonam in their family. In his examination-in-chief Mahavir Singh could not give the name of the Finance Company. In cross-examination on behalf of the Claimants, he deposed that he could not say as to what portion of the amount of Rs. 40,000/- was towards the purchase of car and what was towards the insurance policy. He was given the cover note (of the purchase of the vehicle) after 7-8 days. In cross-examination on behalf of the Appellant Insurance Company Mahavir Singh denied that he had issued the cheque Ex.R3W1/B for Rs. 7841/- drawn by Poonam. He could neither admit nor deny that the said cheque was dishonoured on presentation. He denied that the notice of cancellation of the policy Ex.R3W1/D was dully served on him.

7. J.L. Madan, R3W1 produced the record of the insurance in respect of the vehicle No.DL-4CQ-0593 (the offending vehicle) insured in the name of Mahavir Singh, resident of H.No.78, Gali No.4, Karawal Nagar, Delhi for the period

08.12.2001 to 07.12.2002. He proved the carbon copy of the cover note Ex.R3W1/A. He testified that Mahavir Singh paid the premium by cheque dated 08.12.2001 Ex.R3W1/B. The cheque was dishonoured on presentation to the bank i.e. Jain Cooperative Bank Ltd., on account of insufficient funds. He proved the original Bank Memo Ex.R3W1/C. The policy was cancelled and information about the cancellation of policy was sent by registered letter dated 21.12.2001 Ex.R3W1/D by postal receipt Ex.R3W1/E. J.L. Madan also proved photocopy of the dispatch register. Relevant entry in the photocopy of the dispatch register is Ex.R3W1/F. RTO Loni Road was informed about the cancellation of the insurance policy by the postal receipt Ex.R3W1/G and the entry in the dispatch register was proved as Ex.R3W1/H. The original register was produced at the time of the evidence by the Insurance Company. The witness deposed that the Insurance Company was not liable to pay compensation to the Claimants. The witness was cross-examined on behalf of the owner and the driver. The witness admitted that the AD was not received by the department in respect of the cancellation letter dated 21.12.2001. The witness denied the suggestion that premium amount was paid by the registered owner in cash. The witness showed his inability to say if Poonam had no connection with the registered owner Mahavir Singh. The witness admitted that no notice was sent to the registered owner intimating him about the dishonour of the cheque or seeking further demand with regard to the premium. He deposed that the policy was cancelled straightway.

8. In Deddappa (supra), the Insurance Policy was issued for the period 17.10.1997 to 16.10.1998 on the basis of a cheque dated 15.10.1997 issued by the owner. The said cheque was dishonoured on presentation. The National Insurance Company cancelled the policy of insurance and sent the information to the owner and the RTO. The Supreme Court held that since the contract of insurance had been cancelled and all concerned had been intimated, the insurance company would not be liable to satisfy the claim. Para 24 of the report is extracted hereunder:-

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 contract 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.

9. Turing to the facts of the instant case, it is established that the cheque dated 08.12.2001 (Ex.R3W1/B) for Rs. 7841/- towards the premium was dishonoured on presentation and intimation was given to the Appellant''s Bank on 13.12.2001. The Appellant Insurance Company in turn wrote a letter Ex.R3W1/D cancelling the policy and informed the owner that the vehicle was without the cover of insurance and the insurance cover shall commence only from the date of receipt of fresh remittance at Rs. 7861/- and bank charge of Rs. 20/- in cash or

bank draft in favour of the Appellant. The letter Ex.R3W1/D is extracted hereunder:-

Dated : 21-Dec-01

Registered

Dept : Motor

To,

MAHAVIR SINGH

H.No.-78, Gali No.4, Karawal Nagar,

DELHI

Dear Sir/Sirs/Madan,

Re: Dishonoured Cheque No.257150 dt. 08/12/2001 for Rs. 7841/- drawn on others towards premium against Cover Note No.271455 dt. 07/12/2001 Endt. No.0 and Policy No.6884 Vehicle No. NEW Maruti Omni E.

Please note that the above cheque has been dishonoured with the remarks FUNDS INSUFFICIENT.

It is therefore, understood and declared that the above policy stands cancelled abinitio due to non receipt of consideration and our Co. is not on risk nor any claim will be entertained. IN consequence thereof only a refund of partial amount of premium paid (if any), is allowed under the policy and held for adjustment purposes.

Further, cover shall again commence from the time of receipt of fresh remittance of Rs. 7861 including bank charges of Rs. 20 in cash or bank draft, favouring The Oriental Insurance Co. Ltd. You are requested to surrender the original policy/ covernote/receipt for our records. You are further requested to bring the vehicle along for inspection to enable us to grant the cover.

Thanking you,

Yours faithfully,

Sd/-

(Divisional Branch Manager)

CC : North East Delhi Regional Office

Transport Department, Loni Road

Near Power House

Shahdara,

Delhi.

(This endorsement is written in Hindi).

10. Intimation was sent to the owner (Mahavir Singh) by a postal receipt Ex.R3W1/E and to the RTO by a postal receipt Ex.R3W1/G. There is also a corresponding entry in the dispatch register of the Appellant Insurance Company regarding dispatch of the letter on 31.12.2001.

11. The accident took place on 01.01.2002 i.e. a day after the dispatch of the information about the cancellation of the policy. (Although the letter was dated 21.12.2001). Thus, it is established that the policy was cancelled by the Insurance Company and intimation was set to the owner (Mahavir Singh) as also the RTO on 31.12.2001 i.e. before the accident.

12. Respondents No.7(a) to 7(c) plea that the amount of the premium was paid in cash to the Financer through Agent Raju. Owner could not give the name of the financer, that was however, not very material. No document of purchasing the vehicle through any financer was placed on record by the owner. Otherwise also, this was the internal arrangement between the registered owner and the financer as to how the premium towards the insurance is to be paid to the Insurance Company. Even if, it is assumed that the premium was paid by the owner (Mahavir Singh) to his financer and he defaulted in making the payment appropriately to the Insurance Company, this was the internal arrangement between the owner and the financer. The owner can avail his remedy against the financer if he had committed any breach of contract vis-a-viz the owner.

13. Learned counsel for the owner now through Legal Representatives Respondents Nos. 7(a) to 7(c) place reliance on National Insurance Company Ltd. v. P.V. Lonan & Ors., 2008 X AD (Delhi) 850. The judgment is not attracted to the facts of the present case as there is no dispute about the proposition of law that the Insurance Company cannot avoid the liability unless the intimation is given to the owner as well as to the RTO, which has been duly proved in this case.

14. In view of the foregoing discussion, the Appeal is bound to succeed. The Appellant Oriental Insurance Company limited shall be entitled to recover the award amount along with interest from the owner. Interest from the date of the award till date of recovery will be at the rate of 7.5 % per annum.

15. Respondents No.7 (a) to 7(c) i.e. legal representatives of the owner Mahavir Singh shall be at liberty to avail their remedy against the financer or his agent Raju as per law.

16. It is made clear that Respondents No. 7(a) to 7(c) are the legal representatives of the deceased owner (Mahavir Singh). Section 50 of the CPC (Code) makes the legal representatives liable to satisfy the decree only to the extent of the deceased''s estate which comes to the hands of the legal representatives. A reference may be made to Yogesh Sharma & Ors. v. Devi Dayal & Ors., ILR (1978) 1 Delhi 151, where it was held as under:-

12. It is true that the decree was passed against the sons and the daughter but it was passed against them in their representative character as the legal representatives of the deceased Manohar Lal. This distinction is apparent in the various provisions of the Code of Civil Procedure. By sub-section (2) of s. 50 where the decree is executed against the legal representative he is liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of. Ordinarily the legal representative does not incur any personal liability. He is representing the estate of a deceased person. The decree can be executed to the extent of the property of the deceased in his hands.....

17. Thus, it has been made clear that the estate of the deceased Mahavir Singh only shall be liable to satisfy the order of recovery against Mahavir Singh through his legal representatives Respondents No. 7(a) to 7(c).

18. The Appeal is allowed in above terms. No costs.

19. Pending applications also stand disposed of.