
(2006) 06 BOM CK 0110
In the Bombay High Court
Case No : F.A. No. 770 of 1990

Oriental Insurance Co. Ltd. APPELLANT
Vs
Yogendra Bhalchandra Patil and Another RESPONDENT

Date of Decision : 05-06-2006

Acts Referred:

Motor Vehicles Act, 1939 — Section 105, 110A, 94
Motor Vehicles Act, 1988 — Section 149(1), 96(1), 96(2)

Citation : (2007) ACJ 2051

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : S.M. Vidhyarthi, for the Appellant; P.G. Lad, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka, J.—Heard advocates for the parties. The appellant Oriental Insurance Co. Ltd. has taken exception to the judgment and award dated 26.10.1989 passed by the learned Member of the Motor Accidents Claims Tribunal, Mumbai in a claim petition u/s 110-A of the Motor Vehicles Act, 1939. By the impugned judgment and award, learned Member of the Claims Tribunal awarded compensation of Rs. 67,780 together with interest in favour of the respondent No. 1-claimant.

2. The present appellant insurance company is the insurer of motor taxi No. MMQ 2678 which was involved in the accident. The accident occurred on 5.12.1984. The defence of the appellant was that insured, viz., respondent No. 2 herein had issued a cheque dated 23.7.1984 on account of premium in favour of the appellant insurance company and on the basis of the said cheque, a policy of insurance was issued by the appellant. The case of the appellant is that by a letter dated 11.8.1984 addressed to respondent No. 2, the appellant cancelled the policy as the cheque issued by the insured was dishonoured. It is, therefore, contended that as on the date of accident, i.e., 5.12.1984, the insurance company was not liable to honour the award which might have been passed

against the insured as there was no valid insurance.

3. Mr. Vidhyarthi for the appellant submitted that as the cheque for the premium amount issued by the insured was dishonoured and as the policy was cancelled before the date of the accident, the Tribunal could not have held the appellant liable. The learned Counsel for the respondent No. 1 supported the impugned judgment and award.

4. I have considered the submissions. There does not seem to be any dispute that the cheque in the sum of Rs. 931 was issued by the respondent No. 2 on 23.7.1984. On the basis of the said cheque, a cover note, Exh. 21, was issued by the appellant which was to be in force for the period from 21.7.1984 to 20.7.1985. The finding of the learned Tribunal is that the appellant failed to prove that the letter dated 11.8.1984 by which the policy was cancelled was duly served on the insured and the registering authority of the vehicle. Appellant insurance company examined one Pravin Desai, a Senior Divisional Manager of the appellant. The evidence of the said witness and two other witnesses examined by the appellant shows that the cheque was dishonoured. However, nothing is placed on record to show that the letter cancelling the policy was in fact served by the appellant to the respondent No. 2 or to the registering authority. The Claims Tribunal observed that the alleged office copy of the said letter produced on record did not bear outward number. Moreover, apart from the failure to produce the acknowledgment, even a slip evidencing dispatch of the letter by Registered Post A.D. was not produced by the appellant.

5. In view of this factual position, the case is governed by the decision of a single Judge of this Court in case of *Oriental Insurance Co. Ltd. v. Prakash Chunilal Mirgany* 2006 ACJ 15. In para 6 of the said decision the learned Judge held thus:

(6) In the present case, there is no doubt, a factual distinction which must be noted. However, to my mind, that distinction would not make any difference to the ultimate result. The factual distinction in the present case is that the accident took place on 25.11.1981 after the insurance company had purported to endorse a cancellation of the insurance policy on 19.11.1991 on the ground of the dishonour of the cheque. This to my mind would not make any difference to the position as it obtained at least under the Act of 1939. Section 105 of the Act of 1939 enunciated that where a policy of insurance is cancelled, the insurer shall within seven days notify such cancellation or suspension to the registering authority in whose records the registration of the vehicle covered by the policy of insurance is recorded. The object of this provision is obvious. Section 94 of the Act contained a specific prohibition on the use of a motor vehicle unless there is in force a policy of insurance complying with the provisions of the Chapter. The provisions of Section 96(1) which correspond to the provisions of Section 149(1) of the Motor Vehicles Act, 1988, have already been noted. Sub-section (2) of Section 96 of the Act of 1939 enabled the insurer to defend the action against him on certain specified grounds. Clause (a) thereof was that the policy was cancelled by mutual consent or by virtue of any provision contained therein

before the accident giving rise to any liability or that either before or not later than 14 days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of Section 105. The requirement that insurer must notify the registering authority u/s 105 was, therefore, tied up with the defence which was available to the insurer u/s 96(2)(a) than he had either before or within 14 days of the accident, commenced proceedings for the cancellation of the contract of insurance after notice as contemplated in Section 105. In the present case, the admitted position is that neither was any notice given to the registering authority u/s 105 nor were any proceedings for cancellation after such notice adopted. That being the position, the liability of the insurer cannot stand excluded. In the circumstances and particularly having regard to the law laid down by the Apex Court, I am of the view that the first appeal has to be rejected, since the only ground which has been raised on behalf of the insurer in these proceedings has not been found to be tenable. The first appeal is accordingly dismissed with costs.

6. The learned single Judge relied upon the ratio of decision of the Supreme Court in the case of New India Assurance Co. Ltd. Vs. Rula and Others, .

7. In view of the clear pronouncement of law by this Court, there is no error in the view taken by the Tribunal that appellant is liable to satisfy the award which is passed against the insured. There is no merit in the appeal and the same is dismissed with no order as to costs.

8. The record and proceedings be sent back forthwith to the concerned Claims Tribunal.