
(2016) 07 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : CIMA No.58 of 2005 and MP No.90 of 2005

Oriental Insurance Company Limited

APPELLANT

Vs

Rajni Devi

RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Citation : (2017) AAC 272 : (2016) 3 JKJ 353

Hon'ble Judges : Mr. Ramalingam Sudhakar, J.

Bench : Single Bench

Advocate : None, for the Respondent; Mr. D.S. Chouhan, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Mr. Ramalingam Sudhakar, J. - The appeal is of the year 2005 admitted on 16.05.2005 without framing questions of law. It is being adjourned over these years from time to time.

2. Today the matter is listed before me and after going through the record, I have realized that the appeal was admitted without framing the

questions of law. Therefore, I am inclined to frame the following question of law;

1. Whether the Commissioner-Workmen's Compensation Act was erred in directing the appellant Insurance Company to pay the claim in case of

no policy on the date of accident which took place on 08.08.2002.

Notice was issued to respondents and they were served. However, there is no representation on their behalf.

3. The facts of the case are that the accident was happened on 08.08.2002. The bus owned by respondent no.3 driven by late Vijay Kumar met

with an accident near Jakhawari Railway crossing near Pathankot. On his death,

the wife and mother of the deceased made a claim before the Commissioner - Workmen's Compensation Act.

4. According to the claimants - wife and mother, the deceased was employed as driver by Manzoor Hussain as he died in the course of employment and therefore, in terms of the Insurance Policy, the owner and the Insurance Company are liable to compensate the claimants on the death of Vijay Kumar who died in the course of employment and the policy covers such claim.

5. Evidence was let in by either side and the Commissioner came to the conclusion that the deceased died during the course of employment of Manzoor Hussain. He determined the age, wages of the deceased and the compensation as well. There is no dispute on that.

6. The Insurance Company resisted the claim primarily on the plea that there is no valid insurance on the date of accident. The issue is as follows:

the owner made a request and issued a cheque dated 22nd July, 2002 for covering the vehicle in question. Cover note and policy was issued on

the same date. The cheque issued by the owner Manzoor Hussain dated 22nd July, 2002 came to be dishonoured on 31st July, 2002 on account

of insufficiency of funds. This was intimated by the Jammu and Kashmir Bank on 31st July, 2002. Thereafter the Insurance Company vide

communication dated 8th August, 2002 intimated the owner that the Insurance policy was not valid and it stands terminated from the date of

inception. On this premise the appeal is canvassed.

7. In this case, the Insurance Policy has been cancelled consequent to dishonouring of the cheque on account of insufficiency of funds. Intimation

has been given to the owner indicating that the policy has been cancelled. This is recorded as a matter of fact.

8. The question of Insurance Company becoming liable in such circumstances would not arise in light of the decision of the Supreme Court in case

titled ""United India Insurance Company Limited v. Laxmamma and others"" decided on 17.04.2013, reported in 2012 ACJ 1307 which

in paras 18 and 19 reads as follows:

18. ""We find it hard to accept the submission of learned counsel for the insurer that the three-Judge Bench decision in Inderjit Kaur, 1998 ACJ

123 (SC), has been diluted by the subsequent decisions in Seema Malhotra, 2001

ACJ 638 (SC) and Daddappa, 2008 ACJ 581 (SC).

Seema Malhotra and Daddappa turned on the facts obtaining therein. In the case of Seema Malhotra, the claim was by the legal heirs of the

insured for the damage to the insured vehicle. In this peculiar fact situation, the court held that when the cheque for premium returned dishonoured,

the insurer was not obligated to perform its part of the promise. Insofar as Daddappa is concerned, that was a case where the accident of the

vehicle occurred after the insurance policy had already been cancelled by the insurance company.

19. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards payment of

premium and such cheque is returned dishonoured, the liability of authorised insurer to indemnify third parties in respect of the liability which that

policy covered subsists and it has to satisfy award of compensation by reason of the provisions of sections 147 (5) and 149 (1) of the M.V.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 for premium and

the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and send

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.

9. The said decision squarely covers the issue on hand. The appellant Insurance Company has followed the procedure prescribed. There is no

valid insurance policy to cover the claim.

10. Accordingly, the question of law is answered in favour of the appellant - Insurance Company. The liability is, therefore, stands shifted to the

owner of the vehicle to satisfy the award. No order as to costs.

11. Appeal is disposed of as above.