

**(2011) 10 DEL CK 0032**

**In the Delhi High Court**

**Case No :** MAC. App. 147 of 2008, CM No's. 3414 of 2008 and 11477-79 of 2010

Oriental Insurance Company Ltd.

APPELLANT

Vs

Shivam Bhagat and Others

RESPONDENT

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**Date of Decision :** 03-10-2011

**Acts Referred:**

Constitution of India, 1950 — Article 142, 142

Insurance Act, 1938 — Section 64

Motor Vehicles Act, 1988 — Section 140, 147(5), 149(1), 163A, 166

**Citation :** (2011) 10 DEL CK 0032

**Hon'ble Judges :** Reva Khetrapal, J

**Bench :** Single Bench

**Advocate :** Neerja Sachdeva, for the Appellant; S.N. Parashar, for the Respondent

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**Judgement**

Reva Khetrapal, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 19.12.2007 passed by the Motor Accident Claims Tribunal, New Delhi.

2. The material facts relevant for the decision of the present appeal are not in dispute. A claim petition for compensation u/s 166 and 140 of the Motor Vehicles Act, 1988 was filed by the Respondents No. 1 to 4 claiming compensation for the untimely demise of one Ram Lal Meena in a road accident from the Appellant, the Respondent No. 5 and one Shri Ram Naresh son of Shri Subh Pal Singh, being the insurer, the owner and the driver of the offending vehicle respectively, which was later on converted to a petition u/s 163A of the Motor Vehicles Act, on an application filed by the Respondents No. 1 to 4. Subsequently, the name of Shri Ram Naresh Singh, the driver of the offending vehicle was also deleted from the array of parties. The said claim petition was disposed of by the Motor Accident Claims Tribunal by an order dated 19.12.2007, whereby compensation to the tune of `2,47,056/-along with simple interest at the rate of 9% per annum from the date of the filing of the petition till realization was awarded to the Respondents No. 1 to 4. Aggrieved therefrom, the present appeal has been

preferred by the Appellant -Insurance Company.

3. The sole contention of Ms. Neerja Sachdeva, the learned Counsel for the Appellant -Insurance Company, is that in the present case, which is a case of cancellation of insurance policy on account of the dishonour of the premium cheque, the Insurance Company cannot be made liable to pay the award amount as has been ordered in the impugned award. The counsel for the Appellant has placed strong reliance on the judgments of the Supreme Court in the cases of Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd., and National Insurance Co. Ltd. Vs. Yellamma and Another, to which I shall presently advert.

4. Mr. S.N. Parashar, the learned Counsel for the Respondents, on the other hand, relied upon the judgment of the Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, and a judgment of a learned Single Judge of this Court rendered in The Oriental Insurance Co. Ltd. Vs. Mohd. Waseem and Others, , to contend that the dishonour of the cheque of premium and the cancellation of the policy due to non-payment of premium cannot exonerate the Insurance Company of its liability to pay compensation to a third party, keeping in view the provisions of Section 147 and Section 149, more so, when the concerned transport authority has not been intimated about the cancellation of the insurance policy.

5. Strong reliance is placed by the counsel for the Appellant on the testimony of R3W-1 -Harsh Nangia, an official of the Insurance Company in support of her contention that the bus in question was not insured with the Appellant - Insurance Company, on the date of the accident, that is, on 27.06.1997. R3W-1 proved on record the cheque towards the premium amount as Exhibit R3W-1/1 and the memo of the Bank showing that the said cheque was dishonoured on account of insufficiency of funds, exhibited as R3W-1/2. Further, the said witness of the Appellant - Insurance Company proved and exhibited a number of other documents, including the letter of intimation of the cancellation of the policy to the insured (that is, the Respondent No. 5), the original postal receipts, the copy of the cancelled policy and a copy of the cover note (Exhibit R3W-1/3 to Exhibit R3W-1/6). According to the learned Counsel for the Appellant, a cumulative reading of the aforesaid documents shows that the Appellant-Insurance Company had successfully proved and established on record that the insurance policy was not in existence on the date of the accident, which took place on 27.06.1997, that is, after the cancellation of the policy on 03.02.1997.

6. A look first at the provisions of Section 147(5) and Section 149(1) of the Motor Vehicles Act, 1988, which for the sake of convenience are reproduced hereunder:

Section 147(5) reads thus:

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(1) is as follows:

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 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.

7. On construing the aforesaid provisions, contained in Chapter XI of the Motor Vehicles Act, 1988, which provide for insurance of the motor vehicles against third party risk, a three -Judge Bench of the Hon"ble Supreme Court in the case of Inderjit Kaur (supra), summed up the position as follows:

7. We have, therefore, this position. Despite the bar created by Section 64VB of the Insurance Act, the Appellant, an authorized insurer, issued a policy of insurance to cover the bus without receiving the premium therefor. By reason of the provisions of Section 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 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.

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

9. We may note in this connection the following passage in the case of Montreal Street Railway Company 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.

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

8. The ratio of the aforesaid decision was noticed by the Supreme Court in the case of *New India Assurance Co. Ltd. Vs. Rula and Others*, wherein, it was held that normally, a liability under a contract of insurance would arise only on payment of premium if such payment was made a condition precedent for taking effect of the insurance policy. But such a condition which is intended for the benefit of the insurer can be waived by it. It was observed:

(SCC, P. 200)

(13) ...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.

9. In the case of *Deddappa (supra)*, which is heavily relied upon by the counsel for the Appellant as noticed hereinabove, the Hon'ble Supreme Court in paragraph 24 of its judgment observed as under:

(SCC, P-601)

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.

10. Notwithstanding the aforesaid observations made by it, the Supreme Court in the aforesaid case, in exercise of its extraordinary jurisdiction u/s 142 of the Constitution of India, directed the Insurance Company to pay the amount of the compensation awarded and recover the same from the owner of the vehicle, particularly, in view of the fact that no appeal was preferred by him. Significantly, in *Deddappa's* case postal acknowledgment was proved before the learned Tribunal by the Insurance Company showing intimation of the cancellation of the policy of the insurance to the insured and a copy of the letter dated 06.11.1997 issued to the RTO. In the present case, however, there is no proof on the record

to prove that the cancellation of the contract of the insurance was intimated to the concerned transport authority nor is there even an assertion to this effect.

11. In the case of Yellamma (supra), which too is relied upon by the counsel for the Appellant - Insurance Company, the Supreme Court in exercise of its jurisdiction under Article 142 of the Constitution of India, directed the award amount to be paid by the Appellant to the first Respondent, with liberty to recover the same from the second Respondent by initiating appropriate proceedings in this behalf. In the said case, the facts were altogether different from the facts of the case in hand. The Respondent No. 2 was the owner of the mini-bus, which was insured with the Appellant. An official of the Insurance Company by inadvertence accepted a third-party cheque towards payment of insurance premium from the Respondent No. 2 and issued a cover note in respect thereof. When the said mistake came to his notice, the Respondent No. 2 was contacted by him and asked to pay the amount of premium. The Respondent No. 2 instead of tendering it, returned the original cover-note, and took back the cheque. The original cover note as also the duplicate copies thereof were accordingly cancelled. On these facts, the Supreme Court held that since there was no privity of contract between the Appellant and the second Respondent, the question of enforcing the purported contract of insurance while taking recourse to Section 147 of the Motor Vehicles Act did not arise.

12. Thus, the judgments of the Supreme Court in the cases of Deddappa (supra) and Yellamma (supra) have been rendered on their own peculiar facts and circumstances and do not further the case of the Appellant - Insurance Company that it is not liable to pay the award amount to the claimants/Respondents No. 1 to 4. The Appellant - Insurance Company, in the present case, having issued a policy of insurance, in my view, becomes liable to the third party in respect of the liability covered by that policy, notwithstanding the fact that it may be entitled to or may have cancelled the policy for the dishonour of cheque issued for payment of premium. The dicta laid down by the Supreme Court in Inderjit Kaur's case (supra), that the public interest that a policy of insurance serves must prevail over the interest of the Insurance Company, is clearly applicable in the instant case. Further, as laid down in the said case, by virtue of the provisions of Section 147(5) and 149(1) of the Motor Vehicles Act, 1988, the Appellant, irrespective of its entitlement to avoid or cancel the policy for the reason that the cheque issued for payment of the premium thereon has been dishonoured, is required under law to indemnify third parties in respect of the liability, which the insurance policy issued by the Appellant covers. Section 149(1) comes into operation immediately upon issuance of the certificate of insurance. The said provision has an overriding effect and the Insurance Company will be bound thereunder to indemnify the third party, notwithstanding the fact that the certificate of insurance and the insurance policy are liable to be cancelled or have been cancelled.

13. It also cannot be lost sight of that a contract of motor insurance being a

statutory contract necessitated by the provisions of the Motor Vehicles Act is not on the same footing as an ordinary contract and its cancellation is, therefore, governed by the over-riding provisions of Section 147 and 149 of the Act. The said Act being a beneficial legislation, its provisions must be interpreted by the courts so as to ensure that the legislative intent is furthered, not nullified, and the insurance cover is extended to third parties who are victims of road accidents, who would otherwise be penalized for no fault of theirs.

14. It is, accordingly, held that the Appellant cannot be absolved from its liability towards the third party in the instant case, that is, the Respondents No. 1 to 4. At the same time since the Appellant cannot be asked to bear the brunt of the payment of the compensation amount to the Respondents No. 1 to 4, without having received any premium from the vehicle owner, in my view, the interest of justice would be sub-served by affording liberty to the Insurance Company to recover the compensation amount paid by it to the Respondents No. 1 to 4 from the insured-Respondent No. 5 in appropriate proceedings.

15. The appeal is allowed to the aforesaid extent. There shall be No order as to costs. CM No. 3414/2008 also stands disposed of.

CM No. 11478/2010 (cross-objections filed by the Respondents No. 1 to 4).

16. In view of the fact that the award has been passed u/s 163A of the Motor Vehicles Act, 1988, no ground for enhancement is made out as contended by the applicants. The CM Nos. 11477-79/2010 stand disposed of accordingly.

17. Records of the Claims Tribunal be sent back to the concerned Tribunal forthwith.