
(2001) 12 AHC CK 0096
In the Allahabad High Court

Oriental Insurance Company Ltd.

APPELLANT

Vs

Upendra Babu Dubey and Others

RESPONDENT

Date of Decision : 05-12-2001

Acts Referred:

Insurance Act, 1938 — Section 64V
Motor Vehicles Act, 1988 — Section 149

Citation : (2002) 2 ACC 136

Hon'ble Judges : V.M. Sahai, J;Sudhir Narain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This appeal is directed against the award of the Motor Accident Claims Tribunal dated 27.8.2001 awarding Rs. 3,00,000/- as compensation to the claimant-respondents.

2. The claim petition was filed by the claimant-respondents with the allegations that on 13.1.1999 Priyank Dubey along with Om Prakash Sharma and Vinay Kumar Shukla was going on foot from Ajitmal to Raharpur at about 11.15 a.m. and when he reached near the Police Station Ajitmal, Truck No. UAN 9514 dashed against him, with the result he sustained severe injuries resulting in his death.

3. Mr. Manish Goyal, learned Counsel for the appellant has assailed the order of the Tribunal on the ground that the accident had taken place on 13.1.1999 and prior to it the policy having been cancelled, the appellant was not liable to indemnify the insured under the provisions of Section 149 of the Motor Vehicles Act, 1988 (in short the Act).

4. Briefly, the facts are that the owner of the vehicle gave a cheque dated 3.10.1998 for insurance of the vehicle in question. On 9.10.1998 the cover note was issued to him by the appellant. The cheque issued by the insured was bounced on account of the funds being insufficient. The appellant is alleged to

have sent a letter dated 13.10.1998 intimating to him that as the cheque has been bounced, the insurance policy is being cancelled and it does not cover any risk and asked the insured to return the cover note. The accident took place on 13.1.1999.

5. The core question is, whether on the facts and circumstances of the present case, the appellant is liable to indemnify the insured u/s 149 of the Act? The controversy was considered in *Oriental Insurance Co. Ltd. v. Inderjeet Kaur* (1998) ACC 1 : AIR 1998 SC 588. In this case the insurance policy was issued by the Insurance Company on 30.11.1989 on receiving a cheque for premium. The cheque was dishonoured and a letter was sent by "the Company to the insured on 23.1.1990 intimating him that the appellant was not at risk. The incident took place on 19.4.1990. The Motor Accident Claims Tribunal awarded compensation and repelled the contention that the Insurance Company was not liable to pay the compensation as the cheque was bounced and intimation was given to the insured that the Company was not at risk. The judgments of the Tribunal and the High Court were upheld by Hon"ble the Supreme Court. The contention raised on behalf of the Insurance Company that the risk is not covered unless the premium is received in advance as provided u/s 64-V of the Insurance Act was not accepted. The Apex Court taking into consideration the provisions of Sections 146, 147 and 149 of the Act, took the view that despite of the bar created by Section 64-V of the Insurance Act, the Insurance Company would be liable to indemnify the insured and observed in para 7 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 therefor. 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 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.

6. The Court relied upon the passage of the Privy Council in the case of *Montreal Street Railway Co. v. Normandin* AIR 1917 PC 142, where an observation was made that 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. The view taken by the Supreme Court in *United India Insurance Co. Limited v. Ayeb Mohammed* 1991 ACJ 650, that once the cheque is dishonoured, the Insurance Co. is not liable to indemnify the insured, was overruled. The above aspect was again considered in *New India Assurance Co. Ltd. Vs. Rula and Others*, . In this case the vehicle involved was insured on 8.11.1991

and on the same day at mid night, the vehicle met with an accident in which three occupants died. The insurance policy was issued on the basis of cheque dated 8.11.1991 but it was dishonoured on 16.11.1991 with the result the insurance policy was itself cancelled. The question raised was that the contract of insurance can be treated valid only when the consideration is paid. The Court dealing with the matter observed that the contract of insurance in respect of the motor vehicles has to be construed in the context of the provisions of the Act. At the time of the insurance there are two parties, namely, insurer and the insured but the insurance is for third party who may suffer an injury on account of accident by a vehicle which has been insured and no person is entitled to ply a vehicle unless it covers third party risk as provided u/s 146(1) of the Act. Section 146(1) reads as under:

146(1). 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.

Section 147(5) provides as under:

(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.

The Court laid down the following principles in para 11 as under:

11. This decision, which is a 3-Judge Bench decision, squarely covers the present case also. 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 issuance 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 insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party.

7. In *National Insurance Co. Ltd. v. Seema Malhotra and Ors.* examined the aspect when the insurance policy is cancelled, then what would be its effect. It was held that once the policy is cancelled for non-payment of the premium, it would not be liable to indemnify the insured.

8. Once the cheque is given and the cover note is issued but for some reason it is dishonoured, the policy can be cancelled only in accordance with the provisions of Section 147(4) of the Act which reads as under:

147(4). Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the Registering Authority in whose records the vehicle to which the cover note relates has been registered or to such other Authority as the State Government may prescribe.

9. The said provision contemplates that the insurer is to notify to the Registering Authority in regard to the cancellation of the policy in whose records the vehicle to which the cover note relates has been cancelled. The appellant has relied upon a letter written to the insured. In the footnote of the said letter it indicates that the copy of the said letter has been forwarded to the Area Regional Transport Office and the Development Officer. The appellant produced Sri H.N. Singh as a witness. The Tribunal considered this aspect and found that the appellant did not lead any evidence to show that any letter was, in fact, sent to the Registering Authority. It has made the following observations:

It would be worth to recollect here that there is no pleading nor evidence on behalf of opposite party No. 2 that it gave notice to Transport Authorities or other Authorities or public in general that insurance in respect of such vehicle for period 3.10.1998 to 2.10.1999 covering the date of the accident has been cancelled so that plying of such vehicle on the road could be prohibited by the authorities.

10. The appellant has not shown that the above observation made by the Tribunal is erroneous. The liability of the Insurance Company commences from the date, it issues the cover note. The cover note is issued after obtaining the premium either in cash or by cheque. It is also the duty of the Insurance Company to ensure that the person from whom the cheque is accepted, has sufficient funds in his account. The Agents/Development Officers or other persons working on behalf of the Insurance Company accept the cheque and issue cover note fully knowing that the Insurance Company covers the risk from the date and time of issuing the cover note. The vehicle cannot be plied unless it is insured in view of the provisions of Section 146(1) of the Act. The Insurance Company once issues a policy covering the risk, cannot subsequently deny the right of the third party that it will receive compensation as the vehicle has been insured unless it is proved that it was not at all insured or duly cancelled in accordance with law.

11. In view of the above discussions, we do not find any merit in the appeal and it is, accordingly, dismissed.