
(2009) 11 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : First Appeal Order No. 2715 of 2008

Pardeep Kumar

APPELLANT

Vs

Icici Lombard General Insurance

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Insurance Act, 1938 — Section 64
Motor Vehicles Act, 1988 — Section 147, 149

Citation : (2010) 1 AICJ 228 : (2010) 2 RCR(Civil) 41

Hon'ble Judges : A.N.Jindal, J

Judgement

A.N.Jindal, J.

1 This is owner's appeal against the award dated 3.5.2008 passed by the Motor Accident Claims Tribunal, Rewari (herein referred as "the Tribunal") awarding compensation to the tune of Rs.76324/ along with interest @ 7% per annum in favour of the claimantrespondent No.2 and against him.

2 The prime question raised in the instant appeal is "whether on issuance of cheque, though bounced later on, and the company having issued the cover note could be fastened with the liability?"

3 Shorn of details, facts essential for disposal of the present appeal are that on the fateful day i.e. 10.5.2006 at about 5.00 p.m. the claimant respondent No.2 (herein referred as "the claimant") while driving on scooter bearing registration No. DL3SH3184 was on his way to village Gagad was and when he reached in the proximity of the bus stand Jadra, in the meantime, appellant while driving his car bearing registration No.HR 36E 8393 rashly and negligently struck the scooter of the claimant from the backside and injured him. The matter was lodged at the police station vide FIR No.62 dated 10.5.2006. Claim petition was also preferred which was contested by the respondents.

4 The appellant (owner/driver) while denying the accident further alleged that the vehicle in question was insured at the time of the alleged accident so he

could not be fastened with any liability.

5 The respondent insurance company (now respondent No.1) pleaded that no such accident took place; the appellant was not having any insurable interest in the vehicle at the time of the alleged accident. He has not complied with Section 134 (C) of the Motor Vehicles Act, and has not discharged the obligation to furnish the following particulars :

- i) Insurance policy number and period of its validity.
- ii) Date, time and place of accident.
- iii) Particulars of persons injured or killed in the accident.
- iv) Name of the driver and number of the driving licence.

6 The appellant having committed the breach of the conditions of the policy, the insurance company is not liable. Replication was also filed. From the pleadings of the parties the following issues arose :

1. Whether petitioner sustained injuries in a motor vehicle accident which took place on 10.5.2006 due to rash or negligent driving of vehicle No.HR36E8393 by respondent No.1 ?OPP
2. If issue No. 1 is proved, what amount of compensation, the petitioner is entitled to and from whom ? OPP
3. Whether the respondent No.1 did not have a legal and valid driving licence on the date of accident ? OPP
4. Relief.

8 In order to prove the claim, the claimant examined Ashok Kumar (PW1), Parveen (PW2), Krishan Kumar (PW3) and Dr.Dinesh Poddar (PW4). To the contrary, the respondent No.1 Pardeep (now appellant) himself stepped into the witness box as RW1. The respondent No.2 tendered into evidence, documents Ex.R1 to R3.

9 While deciding issue No.1 it was observed that the accident had occurred on account of rash and negligent act of the appellant. While deciding issue No.2, the Tribunal observed that the respondent Insurance Company stands exonerated from the liability as mere issuance of cover note on the basis of the cheque which ultimately was found to be bounced, the company could not be held liable. However, issue No.3 was not decided being redundant.

10 Since the case would be decided on the basis of two issues settled by the Tribunal, I do not want to delve into the illegality committed by the court for not returning findings on issue No.3.

11 Mr. P.R. Yadav, counsel for the appellant has urged that since a cover note has been issued in favour of the appellant on 5.3.2006 and he was not informed

about the dishonouring of the cheque or cancellation of the policy prior to the accident and he intimated about the same only two days and after the accident i.e. on 11.5.2006. As such, the company cannot shirk its liability to pay compensation to the third party. To the contrary, while arguing about the intimation regarding dishonouring of the cheque as well as cancellation of the insurance cover note vide letter dated 11.5.2006, Ex.R1, it was contended that Ex.R1 cannot be treated as concluded contract as being without consideration and the cover note is always subject to payment of the premium. He has further contended that the said cheque worth Rs. 10469/ was dishonoured on 5.3.2006. It is also contended that the company never issued any insurance policy on account of the dishonouring of the cheque, therefore, the owner knowing fully well, having not paid the premium cannot come to contend that on the basis of the cover note the Insurance Company was liable.

12 Having heard the rival contentions, admittedly, the accident took place on 10.5.2006, whereas, the cover note with, the understanding to ensure that the vehicle would be insured, issued on 5.3.2006 on the basis of the cheque No.001227 for Rs. 10,469/ favouring ICICI Lombard General Insurance Company Limited towards insurance premium which was dishonoured and company vide letter dated 11.5.2006 cancelled the cover note. Notwithstanding the fact that the cover note was issued prior to the accident and it was cancelled two months after its issuance and two days after the accident, now the question "whether the cover note issued without consideration and on the basis of negotiable instrument which was found dishonoured, company could be held liable ?"

13 Admittedly, no insurance policy was issued to the claimant which was to be followed after payment. The contract of insurance is to be construed from the terms used in it. which terms are themselves to be understood in their primary, natural, ordinary and popular sense. (See Colin vaux's Law of Insurance, 7th Bdn.. Para 201). A policy of insurance has, therefore, to be construed like any other contract. On perusal construction of the contract in question, it is clear that the liability was to be undertaken by the company subject to payment of premium, but in the absence of any premium or any other consideration as stipulated may be past, present or future, contract cannot be said to be concluded one. Policy was to be followed only on payment of the premium. Since the premium could not be paid the policy did not follow, as such, certainly the contract cannot be treated as concluded one. The Insurance Act, 1938 also protects the company from such risks. Section 64 VB of the 1938 Act provides that no risk is to be assumed unless premium is received in advance in the following terms :

"Section 64VB No risk to be assumed unless premium is received in advance

(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until I

deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer. Explanation : Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty four hours of the collection excluding bank and postal holidays."

14 The said provisions, thus, in no unmistakable terms provides for issuance of valid policy only on receipt of payment of premium. No doubt, the policy was to take effect from the date of issuance of cheque in case payment is made by cheque but if the cheque is not honoured then it would certainly be presumed that no payment has been made. But in this case, since the premium has not been paid, therefore, it was not followed by the policy. As such, the contract (being without consideration) to the knowledge of both the parties, could not reach the culmination. Had the cheque been encashed and the policy not issued, then the owner could come to argue that he having discharged his obligation, liability could not be fastened upon him or in another case, if the policy had been issued without encashment of the cheque, then the owner could come to contend that the contract stood completed and if for any reason the cheque could not be encashed, he is not responsible or at the most the amount of premium could be received from him. But the present case does not fall in any of the categories. The matter with regard to issuance of the cover note on the basis of the cheque which was dishonoured became the subject matter of discussion before the Division Bench of Karnataka High Court in case *Oriental Insurance Co. Ltd. v. Syaribai and others*, 1995 ACJ 663 wherein their Lordships observed as under :

"The learned counsel for the insured contended that the insurer should have taken immediate steps for cancellation of the policy by giving special notice to the insured, the moment the cheque issued by the insured was bounced and since the insurer failed to do so, the liability of it continued. Therefore, the Tribunal rightly fixed liability on it. This contention is one without force, in view of the recent judgment of the Supreme Court in *United India Insurance Co. Ltd. v.*

Ayed Mohammed, 1991 ACJ 650 (SC). Having regard to the facts and circumstances and the question of law arising therefrom, it held as follows :

"In the impugned judgment the High Court has taken the view that in the absence of steps taken for cancelling the cover note, the insurer's liability continued, although the bouncing of the cheque and steps taken by the insurer cancelling the risk note have been found as a fact. The insurer had issued notice to the registering authority and parties that the cheque bounced and the liability ceases but the High Court has recorded a finding that the notice of cancellation has not been served on the insured. The fact that the cheque had bounced was a matter within the knowledge of the insured. At any rate, there would be that presumption and, therefore, in ordinary circumstances no special notice would be required."

15 In view of Section 64VB of the Insurance Act, 1938 as well as the knowledge of the insured that the cheque has not been encashed, no further notice for cancelling the policy was required as the policy in this case has not been issued. A notice was needed for cancellation of the insurance policy and not the cover note. Similarly, the Karnataka High Court in case *Oriental Insurance Co. Ltd v. Rukmini Bai and another*, 1994 ACJ 811, observed as under :

".....In this view of the matter also it is not possible to come to a conclusion that in the instant case there has been a complete contract so as to enable the court to fasten the liability on the insurer, inasmuch as the requirement of section 64VB has not been complied with. That means no premium was paid in advance and the proposal was not duly completed. The issuance of the cover note by RW 2, agent of the appellant, without receiving the premium amount and issuing a receipt thereon, itself is improper and it is for this reason only that the insurer has taken action subsequently to remove him from the services. Therefore, the transaction said to have taken place on 3.7.1988 was not a genuine transaction. In the absence of a conclusive contract Ex.R1, cover note, is of no assistance as it has no binding character for the reasons stated above."

16 Under these circumstances, in no unmistakable terms mere issuance of cover note without payment of premium would fasten the liability upon the insurance company.

17 As regards the other argument that the insurance company was liable to pay claim third party and could recover the same from the appellant is also of no consequences. Since there is no valid policy of insurance issued by the respondent, how the company could be fastened with the liability. As such, this argument also does not find favour with the appellant.

18 Resultantly, finding no merit in the appeal, the same is dismissed with no order as to costs.