
(1995) 09 MP CK 0063
In the Madhya Pradesh High Court
Case No : F.A. No. 65 of 1994

Ramcharan Goyal

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 26-09-1995

Acts Referred:

Insurance Act, 1938 — Section 64VB

Citation : (1996) ACJ 141

Hon'ble Judges : Tej Shankar, J

Bench : Single Bench

Advocate : Arun Mishra and Anil Mishra, for the Appellant; B.N. Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

Tej Shankar, J.—This appeal has arisen out of order dated 7.7.1994 passed by the First Additional Judge to the Court of District Judge, Shivpuri, whereby the claim of the petitioner for recovery of Rs. 30,000/- has been dismissed.

2. Briefly narrated, the facts are that the plaintiff was the owner of bus No. UTB 3891. It was got insured on 13.2.1987 with the defendant and a cover note was issued. It met with an accident on 12.5.1987 when it dashed a culvert in its attempt to save a truck ahead of Pohri in between village Karahal. An intimation in this regard was given in the police station at once and on 13.5.1987 to the inspector of the defendant. On the plaintiff's report a surveyor went on spot on 14.5.1987. On 22.5.1987 a surveyor also went from Gwalior and made a final survey of the bus. The insurance papers, permit, licence, etc., were demanded which were immediately given at the site. The surveyor estimated the claim of Rs. 30,000/- in his report and submitted it to the office at Gwalior. The plaintiff got the repairs done but the defendant did not pay the claim and hence a notice was given and suit was filed. The defendant alleged that the plaintiff had given the amount of premium through cheque No. 22180 dated 13.2.1987 on the Central Bank of India, Branch Shivpuri and a cover note covering the risk for the

period from 13.2.1987 to 12.2.1988 was issued. It was, however, issued on the condition of receipt of the amount of premium. When the cheque was presented for collection it was dishonoured. Consequently, a letter dated 22.4.1987 was sent to the plaintiff intimating him that in the absence of the payment of premium the cover note issued stood ineffective right from the beginning and the plaintiff could deposit premium afresh along with bank charges either in cash or by demand draft at Gwalior office in order to obtain a fresh risk cover. The plaintiff had no cause of action. There was no contract of insurance as the premium had not been paid. The suit was liable to be dismissed. The learned trial court after considering the entire material accepted defendant's case and dismissed the suit. Feeling aggrieved, this appeal has been preferred.

3. The learned counsel for the appellant contended that no information was given by the defendant when the cheque was bounced. There was a cover note covering the period from 13.2.1987 to 12.2.1988 and hence the defendant was liable to pay the amount.

4. The learned counsel for the respondent, on the other hand, urged that the defendant was not at all liable and the suit had rightly been dismissed. He placed reliance upon the provisions of Section 64VB of the Insurance Act and contended that under this provision no risk can be covered until the premium is received by the insurer. He also relied upon *Oriental Insurance Co. Ltd. Vs. Syaribai*, and *United India Insurance Co. Ltd. v. Ayeb Mohammed* 1991 ACJ 650 (SC).

5. I have considered the contentions raised before me by the learned counsel for the parties. The case involves a short question relating to the liability of the insurer on the admitted facts. It is not in dispute that a cover note was issued covering the risk for the period from 13.2.1987 to 12.2.1988 and a cheque was issued which was bounced and no payment was made to the insurer. A perusal of Section 64-VB clearly shows that it makes a provision that "No risk to be assumed unless premium is received in advance." In the case relied upon by the learned counsel for the respondent in *Oriental Insurance Co. Ltd. Vs. Syaribai*, , a Division Bench of the High Court of Karnataka dealt with a similar question. There too the provisions of Section 64VB and its Explanation were considered. In that case also a cheque was paid towards premium. Cover note and receipt for the premium were issued by the insurance company subject to realisation of payment. The cheque was dishonoured. The insured requested the insurance company to represent the cheque on a particular date. The cheque was re-presented on that date and the same was honoured. The vehicle met with an accident before that date. The Division Bench relied upon the aforesaid authority of the Apex Court, i.e., *United India Ins. Co. Ltd. v. Ayeb Mohammed* 1991 ACJ 650 (SC) and held that the insurance company was not liable. The Apex Court in the aforesaid authority, i.e., *United India Insurance Co. Ltd. v. Ayeb Mohammed* 1991 ACJ 650 (SC), set aside the judgment of the High Court holding that the High Court was not right in holding that the insurance company had failed to take steps for cancellation of cover note and in the absence of steps for cancellation of

the cover note, the risk would be subsisting. The fact of dishonour of the cheque was within the knowledge of the insured and no special notice to the insured was required. The liability of the insurance company ceased. Thus, in face of this authority and on the admitted facts of the present case there does not remain much to be decided. Admittedly, cover note was issued and payment was made through cheque which was dishonoured. When the accident had taken place in spite of the fact that cover note was issued, payment had not been made. Hence, in view of Section 64-VB of the Insurance Act no risk is covered. I, therefore, agree with the learned counsel for the respondent that the plaintiff was not entitled to any relief. The learned trial court was perfectly justified in dismissing the suit. The appeal has no merit and is accordingly dismissed with costs.