
(2019) 04 BOM CK 0085
In the Bombay High Court
Case No : First Appeal No. 1839 Of 2018

SBI Insurance Company

APPELLANT

Vs

Madhubala And Ors

RESPONDENT

Date of Decision : 15-04-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(5), 149(1), 166
Insurance Act, 1938 — Section 64VB

Citation : (2019) 04 BOM CK 0085

Hon'ble Judges : Sunil K. Kotwal, J

Bench : Single Bench

Advocate : S.S. Patil, Ram S. Shinde, A.K. Gawali

Final Decision : Partly Allowed

Judgement

1. This appeal is directed by SBI Insurance Company Ltd., which was respondent No. 3 in Motor Accident Claims Petition ("MACP", for short) No.307/2015, against the judgment and award dated 7th March, 2018 passed by the Motor Accident Claims Tribunal ("Tribunal", for short), Latur in MACP No.307/2015, whereby compensation of Rs.11,93,200/- was awarded and joint and several liability was saddled on original respondent Nos.1 to 3. In this appeal, respondent Nos.1 to 3 are original claimants. Respondent No.2 is original owner of offending vehicle in the claim proceeding. Respondent No.5 is driver of the offending vehicle.

2. Heard Shri S.S. Patil, learned counsel for the appellant - Insurance Company, Shri Ram S. Shinde, learned counsel for respondent Nos.1 to 3 - original claimants and Shri A.K. Gawali, learned counsel for respondent No.4. Hereinafter the parties are referred in accordance with their status in the original proceeding.

3. The facts, in nutshell, are that on 19th November, 2015 when the deceased was riding his motorcycle by Nilanga to Kasar-Sirsi road, the offending private bus, bearing registration No. MH- 12-KQ-0881 came from the opposite direction and by going towards wrong side of the road gave dash to the deceased,

resulting into his death. The deceased was carpenter by profession, earning Rs.400/- per day. He was the only earning member of his family. Therefore, the claimants filed claim petition for compensation under Section 166 of the Motor Vehicles Act against the owner, driver and insurer of the offending bus.

4. The owner and driver of the offending bus did not resist the claim petition. However, the insurer of offending bus filed written statement (Exh-23) and denied its liability to pay the compensation on the ground that it had issued two policies of insurance of the offending bus bearing Nos.3501626 and 2183307. However, both the policies were cancelled by the insurer of the vehicle due to bouncing of cheques issued by the owner of the vehicle issued towards premium of both policies. The defence of contributory negligence was also raised by the Insurance Company.

5. However, at the stage of arguments, learned counsel for the Insurance Company waived the defence of contributory negligence. Learned counsel for the appellant - Insurance Company challenged the award only on the ground that because the policies of insurance issued by the insurer of the offending vehicle were cancelled by the Insurance Company after the occurrence of the incident on account of bouncing of the cheques issued towards premium, the Insurance Company is not liable to indemnify the owner of the offending vehicle. Therefore, the Insurance Company has right to recover the compensation from owner of offending vehicle, paid to the claimants, towards satisfaction of the award passed by the Tribunal. Therefore, following point arises for my consideration.

"Whether the appellant - Insurance Company has right to recover from the owner of the offending vehicle, the compensation amount paid to the claimants towards satisfaction of the award passed by the Tribunal ?"

6. Learned counsel for the Insurance Company submits that the insurance policy No.3501626 was issued on 10th November, 2015, which was valid and effective from that date. The accident resulting into the death of the deceased occurred on 19th November, 2015. However, the cheque issued by the owner of the offending vehicle involved in the accident, towards premium fees of the policy of insurance was dishonoured on account of insufficient funds in the accounts of the owner of the vehicle. Therefore, on 14th December, 2015, Insurance Company issued notice to the owner of bus and R.T.O. and informed that policy No.3501626 was cancelled. He submits that as the policy of insurance was cancelled by the Insurance Company and when its intimation was served to the owner of the offending vehicle, the contract of insurance in between Insurance Company and owner of the offending vehicle came to an end. Therefore, the Insurance Company is not liable to indemnify the owner of the offending vehicle and it has right to recover the compensation amount from the owner of the vehicle, which was paid by the Insurance Company to the claimants. He fairly submits that in view of the law settled by the Apex Court in "Oriental Insurance Co. Ltd. Vs. Inderjeet Kaur" [(1998) 1 SCC 71], once a certificate of insurance is issued, the Insurance Company would not be absolved of its obligation to third parties.

He placed reliance on "National Insurance Company Ltd., Vs. Balkar Ram and others" (2013 ACJ 2416) and "United India Insurance Company Limited Vs. Laxmamma and others" [(2012) 5 SCC 234].

7. On the other hand, learned counsel for the owner of the offending bus submits that before the Tribunal, there was no pleading or argument that in case of payment of compensation to the claimants, insurer has right to recover the same from the owner of the offending bus. He submits that as on the date of accident i.e. on 19th November, 2015, neither the cheque of premium fees issued by the owner of vehicle was dishonoured, nor the policy of insurance was cancelled by the insurer of the offending bus. He submits that after occurrence of the accident for the first time, the Insurance Company issued letter to the owner on 14th December, 2015 and thereby cancelled the policy of insurance. He submits that as the policy of insurance was subsisting on the date of accident i.e. on 19th November, 2015, the Insurance Company is bound to indemnify the owner of the offending vehicle as well as the third party. Therefore, the insurer of the offending vehicle has no right to recover the compensation amount from the owner of the offending vehicle. He placed reliance on "National Insurance Co.Ltd. Vs. Abhaysing Pratapsing Waghela and others" (2008 AIR SCW 6178 and "New India Assurance Co.Ltd. Vs. Rula and others" (2000 AIR SCW 788).

8. I have carefully gone through the authorities relied upon by both the parties. Following settled position of law can be culled out from these various judgments of the Apex Court :-

"Where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV 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 towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends 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. In the case of "United India Insurance Company Limited Vs. Laxmamma and others" (supra), the Apex Court has confirmed the award against the Insurance Company regarding its liability to pay the compensation to the third party claimants. However, liberty was given to the insurer to prosecute its remedy to recover the amount paid to the claimants from the insured.

10. As pointed out by learned counsel for the owner of the offending vehicle, the

right of insurer to recover compensation amount paid to the claimants, from the owner of the offending vehicle, was not debated and decided by the Apex Court. It was not ratio decidendi. So also, in "National Insurance Company Ltd., Vs. Balkar Ram and others" (supra), "National Insurance Co.Ltd. Vs. Abhaysing Pratapsing Waghela and others" (supra) and "New India Assurance Co.Ltd. Vs. Rula and others" (supra), the Apex Court has only considered and determined that in the event of dishonour of cheque of premium, if the intimation of cancellation of policy of insurance was not given to the insured before the date of accident, in that event, the insurer is liable to indemnify the third party and to pay compensation to the claimants/third party. However, in these cases, the Apex Court nowhere considered and decided the right of the insurer to recover the compensation amount from owner of the offending vehicle, which was paid to the claimants/third party, despite cancellation of policy of insurance.

11. Even in "Oriental Insurance Co. Ltd. Vs. Inderjeet Kaur" (supra), the larger bench of the Apex Court evolved the doctrine of 'public interest' and held that the Insurance Company was liable to indemnify the third parties in respect of liability which the policy covered despite the bar created by Section 64-VB of the Insurance Act, 1938. However, the Apex Court did not consider the question of insurer's entitlement to avoid or cancel the policy as against insured when the cheque issued for payment of premium was dishonoured. In the case at hand, the accident occurred on 19th November, 2015. The policy of insurance was issued before the date of accident. However, the cheque of the payment of premium was dishonoured after the occurrence of accident and intimation of cancellation of policy of insurance as given to the owner of the offending vehicle on 14th December, 2015. Certainly, after the service of notice dated 14th December, 2015 to the owner of the offending vehicle, the contract of insurance did not subsist between the insured and insurer. Thus, if the insurer has paid the compensation amount to the claimants, in terms of its statutory liability to indemnify the third party claimants, who had no concern with the contract in between insurer and insured, that does not mean that even the insured is absolved from his liability to repay the compensation amount to the insurer, which it has paid to the claimants. The contract of insurance in between owner of the offending vehicle and insurer, includes reciprocal promises by both the parties. By issuing cheque of amount of premium, the owner of the offending vehicle promises to pay consideration for contract of indemnity and in lieu of consideration of premium amount, the insurer promises to indemnify the owner of the offending vehicle in case of liability of owner to pay compensation for accident.

12. Thus, when on account of bouncing of cheque issued towards premium of policy of insurance, the owner of the offending vehicle committed breach of his promise, the insurer of the offending vehicle is not bound to indemnify the owner of the offending vehicle. In the circumstances, as insurer was liable to pay compensation to the third party, it has right to recover the paid amount from owner of the offending vehicle.

13. Therefore, I hold that appellant - Insurance Company has right to recover the compensation amount with accrued interest thereon from insured, paid by the Insurance Company to the claimants. In the result, I hold that this appeal deserves to be partly allowed and the award passed by the Tribunal needs to be modified to give liberty to the original respondent No.3 - Insurance Company to recover the compensation amount alongwith accrued interest thereon paid to the claimants, from respondent No.1 - owner of the offending bus.

14. Accordingly, First Appeal No.1839/2018 is partly allowed. The award passed by the Motor Accident Claims Tribunal, Latur in Motor Accident Claims Petition No.307/2015 is modified and liberty is given to respondent No.3 - Insurance Company to recover the compensation amount of rs.11,93,200/- with accrued interest thereon from respondent No.1 (owner of offending vehicle). For recovery of this amount from respondent No.1, Respondent No.3/Insurance Company is at liberty to file appropriate proceeding in accordance with law. The compensation amount deposited by appellant/Insurance Company in this Court be transmitted to Motor Accident Claims Tribunal, Latur for its disbursement in accordance with award.

15. The parties to bear their respective costs of appeal.