
(2016) 05 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : FAO No. 360 of 2010

The National Insurance Company Limited	APPELLANT
Vs	
Kalpana Sharma	RESPONDENT

Date of Decision : 27-05-2016

Acts Referred:

Citation : (2016) AAC 1681 : (2017) ACJ 1085 : (2016) 5 ALLMR 68

Hon'ble Judges : Mansoor Ahmad Mir, C.J.

Bench : Single Bench

Advocate : Mr. J.S. Bagga, Advocate, for the Appellant; Mr. Tara Singh Chauhan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.(Oral)—Challenge in this appeal is to judgment and award, dated 31st March, 2010, made by the Motor Accident Claims Tribunal-cum-Presiding Officer, Fast Track Corut, Mandi, Distt. Mandi, H.P. (for short "the Tribunal") in Claim Petition No. 33/08/05/02, titled as Kalpana Sharma v. Deep Ram and another, whereby compensation to the tune of Rs. 3,10,000/- with interest @ 7.5% per annum from the date of the claim petition came to be awarded in favour of the claimant, against the respondents and the appellant-insurer was saddled with liability with right of recovery (for short "the impugned award").

2. The claimant and the driver-cum-owner/insured of the offending vehicle have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. The appellant-insurer has questioned the impugned award on the grounds taken in the memo of the appeal.

4. Learned counsel for the appellant-insurer argued that the amount of premium was paid by the insured/owner-cum-driver through cheque, which was bounced, thus, the appellant-insurer is not liable.

5. The argument of the learned counsel for the appellant-insurer is not tenable for the reason that the insurer has not been able to prove that it has informed the insured about the bouncing of cheque before or after the accident has taken place.

6. In terms of Section 64VB of the Insurance Act, 1938 (hereinafter referred to as "the Insurance Act") read with the provisions of Sections 147 to 149 of the Motor Vehicles Act, 1988 (for short "MV Act"), the insurer has to intimate the insured, which has not been done in the present case, and if intimation is not given and during that period, the accident happens, it is the insurer, who is liable.

7. The Apex Court in the case titled as New India Assurance Co. Ltd. v. Rula and others, reported in AIR 2000 Supreme Court 1082, has held that the insurer has to mandatorily intimate the owner by way of notice about the cancellation of insurance policy and if the accident occurs between the period till the cancellation is conveyed, it is the insurer, who is liable. It is apt to reproduce para 11 of the judgment herein:

"11. This decision, which is a 3Judge 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 nonpayment of premium would not affect the rights already accrued in favour of the third party."

8. The matter again came up for consideration before the Apex Court in Deddappa & Ors. v. The Branch Manager, National Insurance Co. Ltd., reported in 2007 AIR SCW 7948, and the same principle has been laid down. It is apt to reproduce paras 26 to 28 of the judgment herein:

"26. 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.

27. A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries [AIR 1985 SC 278], this Court held :

"We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme."

We, therefore, agree with the opinion of the High Court.

28. However, as the appellant hails from the lowest strata of society, we are of the opinion that in a case of this nature, we should, in exercise of our extraordinary jurisdiction under Article 142 of the Constitution of India, direct the Respondent No.1 to pay the amount of claim to the appellants herein and recover the same from the owner of the vehicle viz., Respondent No.2, particularly in view of the fact that no appeal was preferred by him. We direct accordingly.

9. In the case titled as United India Insurance Co. Ltd. v. Laxmamma & Ors., reported in 2012 AIR SCW 2657, the Apex Court has discussed the law developed on the issue and ultimately held that if cancellation order is not made and conveyed and if the accident occurs till the cancellation is made, the insurer is liable. It is profitable to reproduce para 19 of the judgment herein:

"19. In our view, the legal position is this : where the policy of insurance is issued by an authorised insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorised insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. 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 dishonored 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."

10. The same view has been taken by this Court in the cases titled as M/s New Prem Bus Service v. Laxman Singh & another, reported in Latest HLJ 2014 (HP) 579, and United India Insurance Company Ltd. v. Smt. Sanjana Kumari & others, reported in Latest HLJ 2014 (HP) 1140.

11. Having said so, the impugned award is well reasoned, needs no interference.

12. Viewed thus, the impugned award is upheld and the appeal is dismissed.

13. Registry is directed to release the awarded amount in favour of the claimant strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same in her respective

bank account.

14. Send down the record after placing copy of the judgment on Tribunal's file.