

(2007) 04 JH CK 0001

In the Jharkhand High Court

Case No : Misc. Appeal No. 252 of 2006

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Savitri Kumari Singh and Others

RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Insurance Act, 1938 — Section 64VB

Motor Vehicles Act, 1988 — Section 147(5), 149(1)

Citation : (2008) 1 AndhWR 513 : (2008) ACJ 1469 : (2007) 2 BLJR 2082 :
(2007) 3 JCR 289

Hon'ble Judges : M.Y. Eqbal, J;D.K. Sinha, J

Bench : Division Bench

Advocate : Alok Lal, for the Appellant; A.K. Das and C. Mukherjee for Respondent Nos. 1 to 4, P.K. Choudhary and D.K. Chakravorty, for the Respondent

Judgement

M.Y. Eqbal and D.K.Sinha, JJ.—This appeal by the appellant-Oriental Insurance Co. Ltd. is directed against the judgment and award dated 31st March, 2006 passed by the Additional District Judge-cum-Motor Vehicles Accident Claims Tribunal, Jamshedpur in Compensation Case No. 15/2002 whereby he has awarded a sum of Rs. 12,87,000/- by way of compensation on account of death of the deceased Mahendra Kumar Singh in a motor vehicle accident.

2. The claimants who are the widow, minor sons and daughters of the deceased filed the Claim Petition stating inter alia that on 29.09.2001 the deceased was coming from school where he was a teacher and when he reached near Agrico Chowk, Jamshedpur, a Mini Bus bearing registration No. BR31-2223 came in a very rash and negligent manner dashed against the deceased who sustained multiple injuries including the internal fatal injuries and died on the spot. It was alleged by the claimants that the deceased was a senior teacher in Jamshedpur Workers Union High School and his monthly income was Rs. 13,000/- per month besides his monthly salary which he was getting from the school. The deceased was aged about 40 years and because of his certain death the claimants' future

have been seriously affected. The owner of the vehicle contested the case by filing written statement stating inter alia that the vehicle was insured with the Oriental Insurance Company. The Appellant-Insurance Company also contested the claim denying and disputing its liability on the ground that the offending vehicle was insured with the appellant-Insurance Company on 3.10.2001 whereas the accident took place on 29.9.01. The Appellant-Insurance Company also contested the claim case on the quantum of compensation claimed by claimants.

3. The Tribunal after recording the evidence both oral and documentary came to the conclusion that the vehicle having been insured with the appellant-Insurance Company, the compensation amount is liable to be paid by it. On the question of quantum of compensation the Tribunal held that the compensation of Rs. 12,87,000/- shall be just and reasonable compensation.

4. Mr. Alok Lal, learned Counsel for the appellant-Insurance Company assailed the impugned judgment and award against the Insurance Company as illegal and wholly without jurisdiction. Learned Counsel submitted that the vehicle, in fact, was insured w.e.f. 3.10.2001 and therefore any death or injury of any person occurred prior to 3.10.2001 the appellant shall not be liable for payment of compensation. Learned Counsel submitted that as a matter of fact cover note was issued on 29.9.2001 on good faith without receiving premium but for non-payment of premium the said cover note was cancelled on the same day. According to the learned Counsel the owner of the vehicle again approached the Insurance Company on 3.10.2001 and tendered premium against which both cover note and insurance policy was issued on 3.10.2001 which was made effective from 3.10.2001. We do not find any substance in the later part of this submission made by the learned Counsel to the effect that earlier cover note was cancelled and fresh cover note was issued.

5. Admittedly a cover note was issued on 29.9.01 effective from 9 a.m. One Officer of the Insurance Company who issued the cover note was examined and in his evidence he has said that the cover note was issued on good faith without receiving any premium on the assurance of the representative of the owner of the vehicle that he will show the cover note to the owner then immediately pay the premium amount. When it was not done the cover note was cancelled and the same was entered in relevant register. This statement of the Officer cannot be believed because of two reasons. Firstly there is no such pleading in the written statement filed by the Insurance Company that one cover note was issued earlier on 29.9.01 and the same was cancelled for non-payment of premium on the same day. On the contrary from perusal of exhibit A register it is not clear that a cover note was issued being cover note No. 041132 and the same was cancelled. Secondly from perusal of exhibit C it appears that a cover note being Cover Note No. 041132 was issued on 29.09.2000 at 9 a.m.

6. Be that as it may, even assuming that the cover note was cancelled the said Officer who was examined as D.W. 1 Mr. Swapan Kumar Sarkar has very clearly

admitted in para 16 of the cross-examination that the alleged cancellation of cover note was never communicated to the owner of the vehicle.

7. Besides the above, one of the interesting points is that the Insurance Company produced and proved the cover note issued on 29.9.01 in order to show that it was cancelled but a fresh cover note alleged to have been issued on 3.10.2001 has neither been produced nor proved in the case. Therefore it can safely be presumed that on the basis of cover note issued on 29.9.01 policy was issued subsequently on 3.10.2001.

8. In the case of General Assurance Society Ltd. Vs. Chandumull Jain and Another, Their Lordships observed in paragraph No. 20 of the said judgment which reads as under:

It was contended (and it has been so held by the Divisional Bench) that this cancellation was ineffective, because risk had already commenced and the policy could not be cancelled after the liability of the company began. As a general proposition, this is perfectly right Condition 10 is intended to cancel the risk but not to avoid liability for loss which has taken place or to avoid risk which is already turning into loss. It is obvious that a fire policy cannot be cancelled after the house has caught fire. But it is equally clear that unless the risk has already commenced or has become so imminent that it must inevitably take place, such a clause can be invoked. If property is insured against flood, it is not open to the insurance company to send couriers on motor cycles ahead of the floods to cancel the policy. But if it is thought that a particular dam was not quite safe, the insurance company will be entitled to cancel the policy against flood before the dam has actually started to crumble or has crumbled. Cancellation is reasonably possible before the liability under the policy has commenced or has become inevitable and it is a question of fact in each case whether the cancellation is legitimate or illegitimate.

9. The effect of issuance of policy either without receiving premium or dishonor of the cheque has been well settled by the Supreme Court in the case of Oriental Insurance Co. Ltd. v. Inderjit Kaur and Ors. reported in AIR 1998 S.C. 588 where Their Lordships observed in paragraph No. 7 of the said judgment which reads as under:

We have, therefore, this position. Despite the bar created by Section 64VB of the Insurance Act, the appellant, an authorized 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.

10. Recently a Full Bench of the Kerala High Court in the case of Oriental

Insurance Company Limited Vs. A.B. Sivankuty and Others, It has to be remembered that the Supreme Court made the above observations while appreciating the facts in that particular case accepting and following the decision in Inderjit Kaur's case (supra), in which it was laid down that despite the bar created by Section 64VB of the Insurance Act, the authorized insurer who issued policy of insurance to cover the bus without receiving the premium thereof, became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy the awards of compensation in respect thereof by reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, notwithstanding its entitlement to avoid or cancel the policy for the reason that a cheque issued in payment of premium thereon had not been honoured.

11. As noticed above, there is only one cover note filed and exhibited by the Insurance Company, which was issued on 29.09.2000. The validity of which was 30 days. Another document filed by the Insurance Company is the insurance policy (Ext. B). There is no fresh cover note on the record alleged to have been issued on 3.10.2001. In that view of the matter, since the alleged cancellation have not been communicated to the owner of the vehicle this Court can safely held that the Insurance Company cannot and shall not disown its liability so far third parties are concerned. This issue is decided accordingly.

12. It appears from the judgment that on the basis of Ext. 1, salary certificate, the Tribunal found that the monthly salary of the deceased was Rs. 12,380/-. Hence after deducting 1/3 out of the gross salary the compensation amount was assessed at Rs. 12,87,000.

13. From perusal of Ext. 1 it appears that the take home salary of the deceased was Rs. 11,840/- and not 12,380/-. If 1/3 out of the net salary is deducted, the monthly dependency comes to Rs. 7,900/- approximately. If we take annual dependency and multiple it by 12 the compensation amount comes to Rupees about 9,48,000/- approximately. In our view, therefore, the compensation amount assessed by the Tribunal is in higher side. In the facts and circumstances of the case the compensation amount of Rs. 9,50,000/- shall be just and reasonable compensation. However, we are not disturbing the other part of the award including the interest awarded by the Tribunal.

This appeal is disposed of accordingly.