

(2017) 12 BOM CK 0015
In the Bombay High Court
Case No : 109 of 2009

The Oriental Insurance Co.Ltd

APPELLANT

Vs

Vijay Ramchandra Kale & Ors

RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 165](#),
[Section 165](#), [Section 168](#), [Section 168](#) - Claims Tribunals - Award of the Claims Tribunal
[I](#)

Citation : (2017) 12 BOM CK 0015

Hon'ble Judges : P.N.Deshmukh

Bench : SINGLE BENCH

Advocate : Lalit Limaye, Jyoti Dharmadhikari

Final Decision : Dismissed

Judgement

1. This appeal is preferred by Insurance Company/ori.respondent no.2 hereafter referred as appellant, against the impugned judgment and award dated 7th November, 2008 passed by the Member, Motor Accident Claims Tribunal, Akola in M.A.C.P.No.27 of 2007. By partly allowing the petition, though owner of the offending vehicle, ori.respondent no.1, is directed to pay amount of compensation to the extent of Rs.1,95,000/with interest at the rate of 7% P.A. upon it from the date of petition till its realization, inclusive amount of no fault liability of Rs.50,000/, looking to the peculiar circumstance, appellant is directed to pay said amount to claimants in the first place, and is granted liberty to recover the same from, the owner of the vehicle with interest. In that view of the matter, limited challenge in this appeal is to order of Tribunal directing appellant to pay first and then to recover from the owner.

2. Learned Counsel Shri Limaye appearing for the appellant, has contended that in fact no such direction can be issued as cheque issued by owner dated 21st August, 2006 towards premium of insurance policy was dishonoured for want of

sufficient funds and the bank intimated said fact to appellant on 28th September, 2006 and on receipt of said information, the appellant on 4th October, 2006 had intimated the owner of cancellation of Cover Note for dishonour of cheque. It is thus the case of appellant that much prior to incident which took place on 22nd December, 2006, appellant on 4th October, 2006 itself had, by giving intimation of cancellation of Cover Note cancelled the Insurance Coverage and as such, no liability can be fasten upon appellant much less than to direct the appellant to pay the amount of compensation first to claimants and then to recover the same from owner.

3. Learned Counsel has further contended that to substantiate above case of dishonour of cheque and intimation, appellant has also examined their witness, however, his evidence is not considered by Tribunal in its true spirit and therefore, contended that appeal be allowed setting aside impugned judgment and Award.

4. Learned Advocate Mrs.Jyoti Dharmadhikari appearing for respondent nos.1 to 3/ori.claimants has on the other hand submitted that in fact, no such notice as alleged to have been sent by the appellant by registered post on 4th October, 2006 at any point of time is received by owner, inasmuch as said notice was never sent to the owner on the address which is stated on Cover note and has therefore, submitted that since there is nothing on record to establish fact of cancellation of insurance coverage by the appellant, Tribunal has rightly fastened liability on the Insurance Company. It is further submitted that Chapter XI of M.V.Act of 1988 providing compulsory Insurance of vehicle against third party risk, is a social welfare Legislation to extend relief of compensation to victim of accident caused by use of motor vehicle and has contended that since from the evidence and documents on record it can amply be established that on the day of accident there was no intimation to owner of the vehicle involved in the accident of cancellation of policy for nonpayment of premium since cheque issued for same came to be dishonoured that by itself can be no ground to disallow the claim of claimants and therefore, contended that the appeal be dismissed.

5. In the background of submissions advanced as aforesaid, facts involved in the appeal needs to be considered which can briefly be submitted to the effect that respondents/claimants had filed petition for grant of compensation to the extent of Rs.3,00,000/due to death of deceased Ramchandra Shivram Kale who on 22nd December, 2006 met with an accident involving Car bearing registration No.MH 19 Q 3813 owned by respondent No.4 since it gave dash to the deceased by coming from opposite direction. Owner of the vehicle chose to remain absent before the Tribunal inspite of service and was thus proceeded ex parte. Petition was contested by appellant Company and has come out with a specific case that no negligence can be attributed on the Car driver as no dash was given by Car to the bicycle of deceased but it is deceased himself who met with an accident due to his own negligence. It is further case of appellant that owner of the Car had issued cheque No.1246375 dated 21st August, 2006 towards premium of

Insurance Company of his Car which, however, on presentation to Bank was dishonoured and on receipt of such intimation from the Bank, appellant had issued registered letter to the owner as well as to the concerned Regional Transport Authorities, on 4th October 2006 intimating cancellation of Insurance Policy for nonpayment of premium, much prior to the date of accident which had occurred on 22nd December, 2006.

6. It is thus specific case of appellant that at the time of accident there exists no contract of insurance between Insurer and Insured and thus, no liability can be fasten upon Insurance Company for satisfying the claim in any manner.

7. Sofaras issue of accidental death of deceased Ramchandra Shivram Kale involving vehicle No.MH 19/Q3813 owned by original respondent no.1/Insured on 22nd December, 2006 is concerned, said issue appears to be considered by the Tribunal and is replied in affirmative, which fact is even otherwise not disputed. In that view of the matter, it is establish that deceased died of accidental death involving above numbered vehicle on 22nd December, 2006. In the circumstances, the only issue which needs consideration is if any liability can be fasten upon appellant to pay the amount of compensation as awarded by the Tribunal. Before proceeding to answer the same, it is necessary to understand the Scheme of Section 64VB of Insurance Act, 1938, which is reproduced below :
"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 deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2)

(3)

(4)

(5)

(6)

In view of above provision, it is crystal clear that no risk is assumed by insurer unless premium payable is received in advance.

Similarly, Chapter XI of the Motor Vehicles Act, 1988 deals with insurance of motor vehicle against third party risks. Section 145 of the said Chapter defines :

(a) authorised insurer,

(b) certificate of insurance,

(c) liability,

- (d) policy of insurance,
- (e) property,
- (f) reciprocating country and
- (g) third party.

Section 146 mandates insurance of a motor vehicle against third party risk. Inter alia, it provides that no person shall use the motor vehicle in a public place unless a policy of insurance has been taken with regard to such vehicle complying with requirements as set out in Chapter XI. Section 147 makes provision for requirements of policies and limits of fallibility. With regards to facts involved in the appeal at hand, subsection (5) of Section 147 is relevant, which is reproduced below :

"(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this Section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

8. In addition to above provisions, when Sections 165 and 168 of the M.V.Act of 1988 under which Claims Tribunals are constituted, and found to be empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal necessarily has the power and jurisdiction to decide disputes inter se between insurer and the insured.

9. In the backdrop of above provisions though from the evidence of appellant's witness Bhimrao Daulatrao Dhakale examined at Exh.67, it has come on record that the owner had paid premium on 21st August, 2006 for which Cover Note was issued, said cheque was dishonoured by Dena Bank for want of sufficient funds by its Memo dated 28th September, 2006 and immediately on receipt of said intimation, appellant brought this fact to the notice of owner and of concerned R.T.O. by sending registered letter with acknowledgment due dated 4th October, 2006. In support of his evidence as aforesaid, the appellant's witness has also placed on record relevant documents.

10. On perusal of Dakbook, Exh.17 maintained by appellant, it is established that vide entry at Sr.No.752, some correspondence was sent to owner regarding dishonour of his cheque, however from Letter, Exh.71, which is issued to owner, it is noted that his address mentioned thereon is of "40, Telecom Nagar Amravati (Mah)" and intimation given to him was that his vehicle was insured vide Policy No.163400/31/2007/7782 for the period from 21st August, 2006 to 20th August,

2007 and since the cheque issued by the client towards premium was dishonoured, the policy stood cancelled at their end right from inception of the policy. This letter is dated 22nd September, 2006 which, as aforesaid, is sent on above address of owner. On perusal of document at Exh.45(1), which is copy of Insurance Cover Note, it reveals that there is condition printed thereon which is reproduced below : "In case of dishonour of the premium cheque the document stands automatically cancelled ab initio. This Cover note is valid subject to realization of premium cheque."

11. It is material to note that on perusal of Cover Note address mentioned in it appears to be different than that on letter of intimation sent by registered post to owner as address mentioned in the policy is "40, Telecom Colony, Akoli Road, Amravati" while address of owner as can be found on the copy of his driving licence, Exh.46 is "Telecom Colony Amravati". In that view of the matter, there is no mention of plot No.40, in the driving licence while address mentioned in policy is of "40, Telecom Colony, Akoli Road, Amravati which is totally inconsistent to the address mentioned on letter of intimation, Exh.71 wherein address mentioned is "40, Telecom Nagar Amravati". In view of such different address of owner, there is nothing to establish that the registered letter sent to owner was at all issued on this correct address as such, there is nothing to hold that intimation of cancellation of policy was received by the owner much prior to the accident as submitted on behalf of appellant. Moreover, even from the calculations made on the Cover Note, Exh.45(1) in respect of own damage and liability, the amount calculated is Rs.6924/and Rs.7772/respectively, while cheque, Exh.68 alleged to be issued by owner in the name of appellant Company while purchasing policy involved in this case is valued for Rs.7872/, no satisfactory explanation is put forth on this aspect by the appellant. On the contrary, having considered material difference in these amounts there is even reason to doubt if cheque, Exh.68 for an amount of Rs.7872/is at all issued towards payment of premium for purchasing policy of vehicle involved in the accident. From the above discussed evidence on record thus, it is difficult to hold that intimation of cancellation of Policy was given to the owner of vehicle prior to accident. Nor it can be said that the cheque as alleged was issued towards insurance premium.

12. On the aspect of policy having condition printed thereon about cancellation of same in case of dishonour of cheque, law relied upon by the learned counsel for the appellant in the case of Oriental Insurance Co.Ltd. ..vs.. Nadiram and ors. reported in 2014 ACJ 2110 can not be made applicable in the appeal at hand for the reasons that in that case the policy was held to have been automatically cancelled on account of dishonour of cheque as intimation to that effect was received by the owner and as such owner was alone held liable.

13. The learned Tribunal on the basis of evidence and documents on record, therefore, appears to have rightly held that the owner was not residing at the address mentioned in Exh.71, upon which notice is issued by appellant to the

owner of the Car, at "Telecom Nagar, Amravati", though address on the policy Exh.45(1) is of "Telecom Colony, Akoli Road Amravati. It is further found that there is even no evidence on record that there are two colonies, one is called as "Telecom Colony" and other as "Telecom Nagar". In view of above evidence, thus there is nothing to establish that the intimation of cancellation of policy was issued by appellant, inasmuch as there is nothing on record to establish that there are two colonies or two mohallas namely, "Telecom Colony" and "Telecom Nagar".

14. Learned counsel for the appellant has further relied upon the case of Oriental Insurance Co.Ltd. ..vs.. Nadiram and ors. reported in 2014 ACJ 2110, where, in para no.14 of its judgment the Court has relied in the case of Daddappa ..vs.. Branch Manger, National Insurance Co.Ltd. 2008 ACJ 581 (SC), in which the Apex Court has held that the cheque issued for covering vehicle in question was dishonoured by communicating to the owner of the vehicle and accident occurred after the cancellation of policy. It has further held that if the contract of insurance is cancelled, then, insurance company would not be liable to satisfy the claim towards third party. Para 26 reads thus : :(26) We are not oblivious of the distinction between the statutory liability of the insurance company visavis 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 his 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."

15. Appellant has further relied in the case of Munagala Srinivasa Rao and ors. ..vs.. Rajendra Singh and ors. reported in 2010 ACJ 1107 where in para no.14 Court has observed that, Cover Note, Exh.B2, containing note "cancellation endorsement" of a policy of insurance, Exh.B1, was sent to the insured to the address which is found in policy, Exh.B1. Exh.B2 was returned with the postal endorsement, "not known" and thus the question which arose for consideration was - whether there is valid communication of cancellation of contract of insurance ? In such a case, the presumption under Section 27 of General Clauses Act, 1897, was raised which is rebuttable presumption unless contrary is proved and in the given set of facts was presumed that a registered letter sent to the person on last known address is deemed to have been served or communicated to him. If a communication is sent by registered post to the address give by a person or to a known place of residence, the presumption under Section 27 of General Clauses Act springs into action and it shall be deemed to have been served. However, law relied cannot be made use in favour of appellant for the reason that in the appeal in hand there is no communication found to be made to Insured on the address found on his policy as referred above.

16. On the other hand, learned counsel for respondents/claimants has relied in the case of United India Insurance Co.Ltd. ..vs.. Laxmamma and ors. reported in

2012 ACJ 1307 wherein it is laid down that : "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 award of compensation in respect thereof."

However, in the appeal in hand, from the above discussed evidence and for the reasons mentioned herein above, there is nothing to establish that the policy of insurance issued by the appellant/insurer to cover vehicle involved in the accident on receiving cheque towards premium, having been dishonoured, same was cancelled by giving intimation to the insured prior to date of accident. In that view of the matter, appellant/Company's liability to indemnify the claim of the third party does not cease. In the circumstances, the appellant is liable to satisfy the award of compensation.

In view of above, the judgment of the Tribunal impugned in appeal does not call for any interference. Appeal is, therefore, dismissed.