
(1990) 09 OHC CK 0023
In the Orissa High Court

The United India Insurance Co. Ltd.

APPELLANT

Vs

Sk. Ayeb Ahammed and Others

RESPONDENT

Date of Decision : 20-09-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 103, 104, 105, 106, 94

Citation : (1991) 1 ACC 585

Hon'ble Judges : L. Rath, J

Bench : Single Bench

Judgement

L. Rath, J.—This appeal is at the instance of the insurer as against an award determining the compensation payable by the appellant and the respondent No. 3 jointly and severally at Rs. 15, 000/- together with the consolidated cost of Rs. 500/- and interest at the rate of 6% per annum from the date of claim to the respondent Nos. 1 and 2. It is the submission of Mr. A.K. Mohanty, the learned Counsel for the appellant that since it was the specific case of the appellant insurer as was also found by the Tribunal that long before the accident the insurance policy itself had stood cancelled even at the commencement thereof, the appellant cannot be saddled with the liability to meet the compensation determined. Such contention of the appellant having been rejected by the Tribunal, the appellant has preferred this appeal.

2. Assailing the order of the Tribunal, Mr. Mohanty has urged that though the insurance certificate Ext A had been issued on 9-12-1981 in favour of the respondent No. 3, the owner of the truck which committed the accident, covering liability from 12-12-1981 to 11-12-1982 yet the appellant intimated respondent No. 3 on 6-1-1982 in its letter Ext D that the cheque Ext. B issued by him towards the premium amount had been dishonoured by the Bank with a note Ext. C and that the amount of premium should either be remitted in cash or by Bank draft within 12-1-1982 failing which the policy is to be automatically stand cancelled. Since the payment was not made by the respondent No. 3, the policy was cancelled on 23-2-1982 and the R.T.O. was intimated of the fact through Ext

E. The letter was also received by the R.T.O. as would appear from the acknowledgement receipt Ext. E/I and besides the financier of the truck, OSFC was also issued a copy of the letter Ext.E the acknowledgement of which is Ext.E/2. On the basis of such facts, it is urged that though Section 96(1) of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") makes the insurer liable to meet the award amount, yet such liability of the insurer is subject to the provision of Sub-section (2) of Section 96 and hence as the policy had been cancelled from the very beginning, it must be held that the appellant had been able to establish its defence as contemplated u/s 96(2) of the Act because of which no direction would have been given in the award to the insurance company to pay the amount

3. The learned Tribunal before whom such contentions were raised though found as a fact that the cheque issued by the respondent No. 3 had bounced and that he had not made any cash payment thereafter towards the premium, yet rejected the stand of the appellant since he had not placed any documentary proof to show that Ext.D, the letter on 6-1-1982 to the respondent No. 3 had been delivered to him, and since Ext.A, the certificate of insurance had not become dead or inoperative merely on the bouncing of Ext.B, a fact which was acknowledged by the appellant itself in Ext.D by intimating the respondent No. 3 that unless he paid the premium either by cash or Bank draft within seven days of receipt of the letter and that if the remittance was not received by 12-1-1982 it would result in automatic cancellation of the certificate. The Tribunal further held that though the cancellation of the policy was made as per EXT. dated 23-2-1982 (the communication of which to the respondent 3 was marked "A" for identification), yet Ext.A itself had not been recalled and no steps had been taken in this regard.

4. Section 94(1) imposes statutory liability on the insurer to satisfy the judgment against the insured if the judgment is in respect of any liability in respect of which a policy is required to be taken out and the liability is in fact covered by the policy, irrespective of the fact whether the insurer is either entitled to avoid or cancel the policy or in fact has avoided or cancelled it. This liability of the insurer is however subject to the provisions of Sec.96 which in Sub-section (2) provides that the insurer would have no liability to pay any amount in respect of the liability created under Sub-section (1) unless it has received notice of the bringing of the proceedings or of the judgment where the execution thereof has been stayed in appeal. A statutory right is created in favour of the insurer to whom the notice of the bringing of the proceedings is given to be impleaded as a party to the action and defend the action on any of the grounds as stipulated in Clauses (a), (b) or (c) of Sub-section (2).

5. A combined reading of Sections 96(1) and 96(2) would show that while the first subsection creates a liability against the insurer, the second entitles it to receive notice regarding the bringing of the proceeding and to a right to implead itself as a party to defend the action on the limited grounds as set out in the sub-

section so as to avoid its liability though ordinarily it would have no right to be impleaded as a party to the proceedings unless the Tribunal thinks of impleading it as a party under Seel 10-C(2-A). Besides, Section 96(2) also gives a further right to the insurer being entitled to notice of the appeal proceeding if any appeal is preferred and the judgment is stayed in execution.

If the insurer who has appeared in pursuance of the notice and is impleaded as a party is able to substantiate any of the defences taken within the ambit of Sub-section (2), there shall be no liability against it in respect of the accident which decision is to be reflected in the award, but where the insurer fails to establish the defences, it would have the responsibility to satisfy the award against the insured.

6. So far as the appellant is concerned, it took a defence as u/s 96(2)(a) to avoid its liability. The provision provides that the insurer would have no liability if.

(i) the policy has been cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability takes place, and

(ii) either the certificate of insurance was surrendered to the insurer, or

(iii) the person to whom the certificate was issued has made an affidavit stating that the certificate had been lost or destroyed, or

(iv) either before the accident or not later than fourteen days after it the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of Section 106.

Unless all such facts as are required by the different alternatives as above are established, the liability of the insurer cannot be avoided.

7. The liability u/s 96(1) ensues not upon issue of a policy but on the issue of the certificate of insurance. u/s 95(4), a policy is of no effect for the purpose of Chapter VIII of the Act unless the certificate of insurance has been issued. Section 103 speaks of the effect of issue of the certificate of insurance and says that as long as the policy has not been issued, the issue of certificate of insurance shall be deemed, as far as any other person except the insured is concerned to be the policy of insurance conforming in all respects with the description and particulars stated in such certificates, and if in fact the policy has been issued but the actual terms of the policy are less favourable to the person who claims under the policy or by virtue of the policy against the insurance than the particulars of the policy as stated in the certificate, then as between the insurer and any other person except the insured the policy shall be deemed to be as conforming to the terms as stated in the certificate. The provision would show that so far as the liability of the insurer is concerned, it becomes dependent upon and is linked with the certificate of insurance and hence unless such certificate of insurance has been taken return of or has been cancelled after cancellation of the policy the liability of the insurer shall continue to have been acknowledged in Sections 104 and 105 of the Act. Section 104 casts liability on the insured to

deliver to the insurer the certificate of insurance if the policy is cancelled or suspended, or if the certificate has been lost or destroyed, to make an affidavit to that effect. Sub-section (2) of Section 104 enjoins that if the insured either fails to surrender the certificate of insurance or to make an affidavit, as the case may be he would be punishable with fine as provided for Section 105 requires the insurer to notify the registering authority only regarding cancellation or suspension of the policy, but does not speak about the insurance certificate. What Section 96(2)(a) requires is that not only the policy must have been cancelled either by mutual consent or by virtue of the provisions contained in the policy, but also that the certificate of insurance must have been surrendered or an affidavit must have been filed as stated to in Section 104 or where such steps have not been taken, the insurer has, after cancellation of the policy and intimation of the same to the registering authority u/s 104 of the Act, taken steps for cancellation of the certificate of insurance either before or within fourteen days of the happening of the accident.

8. Though the appellant has taken the stand that it had cancelled the policy because of non-payment of the premium which authority it had under the policy, and it had intimated such fact to the registering authority as also to the respondent No. 3, yet it is not its case that it had taken any steps for cancellation of the certificate or insurance. There being no such plea at all, it has to be unhesitatingly held that the appellant has not established its defence in terms of Section 96(2)(a). In view of that it is also not necessary to go into the question as to whether Ext.D was served on the respondent No. 3 or a copy of Ext.E was served upon him, since even accepting that the policy itself was cancelled to the knowledge of the respondent No. 3, yet the appellant cannot avoid the liability until the certificate of insurance has been either surrendered or an affidavit as required u/s 104 has been filed or it has commenced the proceeding in time for cancellation of the certificate. The Tribunal, in the premises, is correct in its direction that the appellant has become liable u/s 96(1) to pay the award amount.

9. A further point was urged by Mr. A.K. Mohanty that Section 96(2) is an unworkable provision since it requires notice to be given to the insurer through Court either before or after the commencement of the proceeding but that there is no way by which notice can be issued to the insurer through Court before commencement of the proceeding as without the proceeding itself having been accepted before the Court it would have no authority or occasion to issue notice to the insurer. The question does not arise for consideration in this case since it is in no way relevant to the conclusions reached above regarding liability of the appellant, but however it is worthwhile to note that the provision has continued in the statute since 1939 and has always been understood as requiring notice to be given to the insurer of the bringing of the proceeding through Court.

10. In the result, the appeal has no merit and is dismissed with costs.