

(1998) 02 OHC CK 0020
In the Orissa High Court
Case No : M.A. No. 677 of 1994

United India Insurance Co. Ltd.

APPELLANT

Vs

Abada Khatun and Others

RESPONDENT

Date of Decision : 11-02-1998

Acts Referred:

Insurance Act, 1938 — Section 64VB
Motor Vehicles Act, 1988 — Section 147, 149

Citation : (2000) ACJ 714 : (1998) 85 CLT 485

Hon'ble Judges : P.K. Mohanty, J

Bench : Single Bench

Advocate : A.K. Mohanty and S.N. Satpathy, for the Appellant; A.K. Choudhury, for B.P. Mohanty, N. Paikray, R.P. Kar, A.N. Ray, M.K. Badu and A. Nayak, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—The insurer, United India Insurance Co. Ltd., is the appellant against the judgment/award of the Joint Labour Commissioner-cum-Workmen's Compensation Commissioner, Cuttack fixing the liability of compensation on the insurance company.

2. The claimants were the legal heirs of the deceased Abdul Habib alias Habibur Raheman Khan, who was helper in the bus bearing registration No. ORF 2155, which met with the accident on 24.1.1994 at about 4 a.m., having overturned. The deceased was employed by opposite party No. 1, Managing Partner of Kulamani Travels, in the offending bus and was receiving monthly wages of Rs. 900 and was aged about 35 years. The claimants were his widow and children. On receipt of notice of claim application, the opposite party No. 1, the owner of the vehicle and opposite party No. 2, the insurer (appellant herein) had filed their written statements denying liability and the entire claim of the petitioners.

3. The insurer, opposite party No. 2, took the specific plea that the insurance cover having been cancelled due to bouncing of the cheque partly paid towards

premium, the insurer is not liable to compensate and cover the liability of the owner. However, the Workmen's Compensation Commissioner found that the deceased was working as a helper in the bus in question and thus, was a workman and the death occurred in the course of employment under opposite party No. 1. Accordingly, an amount of Rs. 70,942 as compensation was determined and the opposite party No. 2 being the insurer, the liability was ordered to be covered by it, hence this appeal.

4. The main question that calls for determination is, as to whether in the facts and circumstances of the case, the insured bus owner having not paid the premium in full and the part premium paid by cheque having bounced and the insurance company having cancelled the policy, the insurer has any liability under the policy to any employee of the alleged insured in view of the provisions of Section 64VB of the Insurance Act.

Mr. A.K. Choudhury, learned counsel on behalf of Mr. B.P. Mohanty for the respondents-claimants, however, contended that the bouncing of cheque, if any, has no relevance so far as third parties are concerned. It may be between the insured and the insurer. The cover note having been issued, the third parties have no scope to know what transpires between the insured and the insurer and as to whether at any relevant point of time the policy has been cancelled by the insurance company.

5. Before considering the rival contentions of the learned counsel for the parties, the provisions of Section 64VB of the Insurance Act, 1938 which are quoted below, need consideration:

Section 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) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation.-Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of

the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of Sub-section (1) in respect of particular categories in insurance policies.

Mr. A.K. Mohanty, the learned counsel for the appellant states that the part premium paid by way of cheque having bounced and the insurance company having cancelled the policy and intimated the fact to the appropriate quarters, it can have no liability in view of the aforesaid provisions of Section 64VB of the Insurance Act.

6. It is submitted by Mr. A.K. Choudhury, learned counsel for the respondents-claimants that Section 95 of the Motor Vehicles Act requires a motor vehicle to have an insurance policy compulsorily, which shall cover the liability in respect of death arising out of and in course of the employment of the employee of a person insured by a policy or in respect of bodily injury sustained by the said employee, arising out of the employment under the Workmen's Compensation Act, 1923 (hereinafter referred as "the W.C. Act"). Section 95 (2) (a) clearly lays down that where the vehicle is a goods vehicle, a limit of Rs. 1,50,000 in all including the liabilities, if any, arising under the W.C. Act in respect of the death of or bodily injury to employees (other than the driver) not exceeding six in number. Sub-section (5) of Section 95 required that a person issuing a policy of insurance 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. It is, therefore, contended that in view of Section 96 (1) read with Section 95 of the Motor Vehicles Act, the insurer cannot avoid the liability. The learned counsel has referred to a decision in *New India Assurance Co. Ltd. v. Prafulla Kumar Das* 1989 ACJ 852 (Orissa), to contend that non-payment of premium and consequent cancellation of the policy, if any, would not absolve the insurer from making payments to third party claimants since it is a matter between the insurer and the insured and the policy having been issued, a third party cannot be affected in absence of specific knowledge or notice of the aforesaid facts. The learned counsel has referred to several decisions of this court as well as of other High Courts.

7. Mr. A.K. Mohanty, learned counsel for the insurer, United India Insurance Co. Ltd., appellant has referred to a decision of Madhya Pradesh High Court in *United India Insurance Co. Ltd. Vs. Ratan Singh and Others*, and a case decided by the Karnataka High Court in *The Oriental Insurance Co. Ltd. Vs. Smt. Rukminibai and others*, and contends that the aforesaid decisions have in details considered the import of Section 64VB of the Insurance Act in the present contest. It is his submission that in view of the specific provision of Section 64VB of the Act, the

insurer having not received the full payment of premium, the cheque given by the insured having bounced, the insurance company incurs no liability whatsoever and, therefore, the decision of the Commissioner is erroneous and liable to be set aside.

8. A Division Bench of the Madhya Pradesh High Court in *United India Insurance Co. Ltd. Vs. Ratan Singh and Others*, , while construing Section 64VB and requirement thereof have held that the object of the section is to secure advance payment of the premium to the insurance company before the assumption of the risk. Section 64VB(1) places a prohibition upon the insurer that unless and until it receives the payment of premium or the same is guaranteed to be paid in a particular manner and within a particular time as may be prescribed, in advance, there can be no assumption of risk on the part of the insurer. Sub-section (2) of Section 64VB lays down that the risk may be assumed not earlier than the date on which the premium has been paid by cheque or by cash to the insurer in case of those risks for which premium can be ascertained in advance and, therefore, the liability is assumed only after the premium is received in advance.

The court took the view that in view of Section 64VB of the Insurance Act, if the premium was not received by the company because of the bouncing of the cheque, issuance of a cover note against the cheque so issued, there was no risk nor contract as there was no payment. It was held that in such circumstances, the insurer cannot be made liable to pay any amount of compensation either interim or final.

In *United India Insurance Co. Ltd. v. Ayeb Mohammed* 1991 ACJ 650 (SC), the Apex Court has observed that the fact that the cheque had bounced was a matter within the knowledge of the insured and at any rate there would be that presumption and, therefore, in ordinary circumstances, no special notice would be required.

The Karnataka High Court in *The Oriental Insurance Co. Ltd. Vs. Smt. Rukminibai and others*, , while interpreting Section 64VB has taken the view that the issuance of cover note by the insurance agent without receiving the premium amount and issuing a receipt thereon, itself is improper, inasmuch as, in absence of a conclusive contract the cover note would be of no assistance as it has no binding character. Thus, on a harmonious construction of Section 64VB of the Insurance Act read with Section 96 (1) of the Motor Vehicles Act and the provisions under the Workmen's Compensation Act, the inevitable conclusion would be that the liability of the insurance company comes only after the requirement of Section 64VB of the Insurance Act is complied with and unless and until the premium is paid in full, there being no completed contract on payment of the premium, the insurance company assumes no liability to indemnify the insured.

It may be noted with emphasis that the facts of this case and the manner in which the insurance company has accepted the premium in part by cash and in

part by cheque, are abnormal and do not appeal to reason. It is not understood as to how the premium was received by cash in part and for the balance a cheque, which ultimately bounced. I repeatedly posed this question to the learned counsel appearing for the insurance company, but he could not point his finger to any of the provisions of any rule or any circular or any administrative instruction to say that the manner in which the premium has been accepted is in accordance with law. Insurance companies are public sector companies having monopoly in the business of insurer of public transport and other such matters to indemnify mainly the third party liability of the owner of the vehicles arising out of and in course of use of the vehicle and as such are expected to deal with it with utmost care and caution. The casual and peculiar manner of acceptance of premium and assumption of risks, speaks of the sorry state of affairs prevailing in the insurance company and has to be taken note of by the authorities at the helm of affairs.

9. The decision of this court in *National Insurance Co. Ltd. Vs. Ram Krishna Mishra and Others*, , needs consideration. This court has held that the insurer cannot be absolved of its liability once it issues a policy. Provisions of Section 64VB of the Insurance Act, no doubt, put an embargo on the power of the insurer to assume any risk unless and until the prescribed amount is received and/or deposited in the prescribed manner. But notwithstanding the same, if the insurer enters into a contract with the insured, then the contract cannot be said to be void. This decision has also taken note of the ratio decided in *New India Assurance Co. Ltd. v. Prafulla Kumar Das* 1989 ACJ 852 (Orissa). It appears that in view of the decision in *United India Insurance Co. Ltd. v. Ayeb Mohammed* 1991 ACJ 650 (SC), the Hon'ble single Judge of this court had referred the matter to the Division Bench for clarification, whether the decisions referred by this court are good law in view of the decision of the Apex Court. Mr. Choudhury submits that the Division Bench in Misc. Appeal No. 173 of 1990 clarified the position and observed that looking at the ratio of the judgment of the Apex Court, the Division Bench did not find that the proposition of law as considered by the two single Bench decisions of this court has lost its force. Therefore, it is submitted that the Division Bench having not found any difference in the proposition laid in the two single Judge decisions of this court with that of the Apex Court, the submission that the decision rendered in *National Insurance Co. Ltd. v. Ram Krishna Mishra* (supra), still holds the field and has to be followed.

10. The point involved now, however, has been set at rest by the Hon'ble Apex Court in *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others*, . The Apex Court has observed at paras 8 and 9 as follows:

(8) We have, therefore, this position. Despite the bar created by Section 64VB of the Insurance Act, the appellant, an authorised 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 award 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.

(9) The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured.

The Apex Court while resolving the issue has declared the decision rendered by it earlier in *United India Insurance Co. Ltd. v. Ayeb Mohammed* 1991 ACJ 650 (SC), does not lay down good law.

11. In that view of the matter, the appellant insurance company having issued the policy on receipt of the cheque for the major part of the premium in contravention of Section 64VB of the Insurance Act, it cannot claim immunity thereunder to absolve itself from the liability. The claim of the third party, therefore, cannot be defeated for the self-created predicament of the insurer in issuing a policy without receiving the premium.

In the result, the appeal is dismissed being devoid of any merit. But in the circumstances, there shall be no order as to costs.