(2004) 08 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No''s. 893 and 5205 of 2003

United India Insurance Co. Ltd. APPELLANT

Vs

Fateh Singh and Others RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Citation : (2006) ACJ 1663

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : Sanjeev Johari, for the Appellant;

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the appellant.

2. These appeals are filed by appellant insurance company to challenge the award dated 5.8.2003 by which Motor Accidents Claims Tribunal, Udaipur in Claim Case Nos. 521 and 522 of 1996 awarded compensation of Rs. 59,000 and Rs. 3,08,100 to the claimants of the respective claims.

3. Learned Counsel for appellant submitted that though the cover note for the vehicle in question was issued on 16.8.1996 and accident occurred on 18.8.1996, but the cheque given by the insured was dated 19.8.1996 and policy was issued to the insured by appellant insurance company on 19.8.1996, a day after the accident. Therefore, according to learned Counsel for the appellant on the date of accident, the appellant company did not receive the premium for insurance of the vehicle and also did not issue any policy to cover the risk of the vehicle, therefore, the appellant company was wrongly held liable by the Tribunal to pay the compensation amount to the claimants.

4. The sum and substance of the argument of learned Counsel for the appellant is that unless and until the actual payment is received by the insurance company, the insurance company cannot be made liable to pay the compensation on the

ground of any coverage of risk by the insurance policy. Secondly, in case where post-dated cheque is given then the risk can be covered by the insurance company at the most from the date of cheque and not from any prior date. The learned Counsel for the appellant relied upon Section 64VB of the Insurance Act, 1938.

5. The admitted facts are that the cheque was given to the agent of the insurance company on 16.8.1996 and the cover note was issued by the agent of the appellant insurance company on 16.8.1996. The cover note contains specific fact that it has been issued to cover the risk from 16.8.1996. It is also not disputed that cheque was dated 19.8.1996 and policy was issued on 19.8.1996. The accident occurred before 19.8.1996. In view of the above facts, it is clear that the agent of appellant insurance company, under the instructions of the appellant company entered into contract on behalf of the appellant insurance company and gave in writing, in cover note, that the vehicle in question stands insured from 16.8.1996. This appears to be a concluded contract on the basis of consideration to be paid in future. The insurance company felt satisfied with the assurance of the owner of the vehicle and accepted the post-dated cheque. Not only this, but they in fact, realised the cheque amount after the due date given in the cheque. In view of the above, the appellant insurance company cannot fall back on the date given in the insurance policy, which was issued by them after issuing cover note dated 16.8.1996. It appears that the dates given in the insurance policy to cover the risk from 19.8.1996 is a unilateral act, contrary to the written assurance given in the cover note. Therefore, that unilateral act of insurance company is not binding upon the insured and the insurance company cannot back out from their own admission to take liability mentioned in the cover note dated 16.8.1996. The policy follows the cover note and it should normally follow in the same terms in which cover note is issued unless it is agreed by both the parties, not to be in the same terms as given in the cover note.

6. Otherwise also, the contentions of learned Counsel for appellant has no force. Even Section 64VB also provides that the risk of vehicle can be taken by the insurance company from the date prior to the date of actual receipt of the amount by the insurance company. The explanation appended to Sub-section (2) of Section 64VB makes it clear that risk may be assumed from the date from which the money order is booked or the cheque is posted. It nowhere says that the risk can be assumed only from the date of receipt of the money in the hands of the insurance company.

7. In view of the above, if the Claims Tribunal held that the appellant insurance company is liable for the claim on the basis of the appellant''s admission to cover the risk from 16.8.1996 by issuing the cover note, the Tribunal has not committed any illegality.

Therefore, the appeals of the appellants have no merit, hence both the appeals are hereby dismissed.

