(2004) 04 MP CK 0072

In the Madhya Pradesh High Court

Case No : M.A. No. 1471 of 2000

United India Insurance Co. Ltd. — APPELLANT

Vs

Mahendra Singh and Others — RESPONDENT

Date of Decision : 12-04-2004

Acts Referred:

Insurance Act, 1938 — Section 64VB
Motor Vehicles Act, 1988 — Section 147(4), 147(5), 149(1)

Citation : (2004) 3 ACC 927 : (2006) ACJ 120

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

Bench : Single Bench

Advocate : S.V. Dandwate, for the Appellant; R.N. Dave, for the Respondent

Judgement

P.C. Agarwal, J.—This is an appeal by insurance company. The claimant, R-l, has filed a motor accident claim against Gangaram, R-2, Narsingh, R-3 and the insurance company, the appellant, on being injured in an accident with minibus No. MP 09-S 2855. Gangaram, R-2 and Narsingh, R-3, the owner and driver of the offending vehicle have not contested the claim. They had not filed even their written statements. The Claims Tribunal below has awarded compensation of Rs. 90,000 with interest at the rate of 12 per cent per annum from date of claim, i.e., 4.1.1999 against the respondent Nos. 2, 3 and the appellant.

2. As per appellant, a cover note, Exh. D-l, was issued on 31.7.1998 insuring the vehicle for one year. However, cheque issued for Rs. 8,954, Exh. D-6, on record was dishonoured vide Exh. D-5 and was returned to insurance company vide Exh. D-7 whereupon the insurance company had issued a letter Exh. D-8 to Gangaram, R-2, cancelling the insurance policy from the very inception and, thus, the insurance company was not liable to cover the risk of the accident happening on 4.12.1998. Gangaram, R-2, had failed to pay any premium and the insurance company was not liable to cover the risk in view of Section 64VB of the Insurance Act, 1938. The insurance company had examined Govind-prasad Soni, NAW-1, the Senior Assistant to prove these facts before the Tribunal.

3. The Tribunal below held that merely because the cheque was dishonoured liability of insurance company to the claim of third party had not come to an end. The Claims Tribunal had relied upon Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, , wherein it was held by the Apex Court:

Despite 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 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.

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.

4. New India Assurance Co. Ltd. Vs. Rula and Others, ; Ishwar Singh Agrawal Vs. Ashok Kumar Garg and Others, ; The Oriental Insurance Co. Ltd. Vs. Smt. Santosh Devi Goyal and Others, ; The Oriental Insurance Company Limited Vs. Smt. Honnamma and Another, ; M/s. Oriental Insurance Company Limited, Bangalore Vs. Guddappa and Aothers, ; United India Insurance Co. v. Abada Khatun 2000 ACJ 714 (Orissa); National Insurance Co. Ltd. v. Pawan Kumar 2001 ACJ 67 (MP); have been relied upon by the Tribunal below. All these cases were decided on above principles in Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, .

5. In Gaura Bai v. Dev Nath Makad 2003 ACJ 836 (MP), the same principle was applied though in this case accident had happened before the cancellation of the policy. Oriental Insurance Co., Ltd., Hyderabad Vs. Pinjary Hussainamma and others, , was a case where the policy was cancelled prior to the date of accident but cancellation was not communicated to the registering authority as is required u/s 147(4) of the Motor Vehicles Act, 1988. Insurance company was held not exempted from the liability to the third party, though it could proceed against the owner in view of Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, . In National Insurance Co. Ltd. Vs. Ramzan Khan and Others, (MP), the cheque towards premium was dishonoured for want of sufficient fund. Insurance company had cancelled policy from the date of its inception and owner of the vehicle was informed by a registered letter. Accident has happened thereafter. However, letter of insurance company did not bear the address of the insured. It was available on the policy and insured had specifically stated that he did not receive the intimation of cancellation of the policy and in such circumstances contract of insurance was held had remained in force and the insurance company was held liable. National Insurance Co. Ltd. v. Markandrao M.A. No. 727 of 2001, decided on 28.10.2002, in similar circumstance held that under the provisions of

Sections 147(5) and 149(1) of Motor Vehicles Act, 1988 the insurance company is liable to indemnify the third party. However, the insurance company could recover the amount from the insured in view of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., . In the facts of the present case also the insurance company had issued cover note on basis of a cheque, such cheque was dishonoured later. As per insurance company he had intimated the insured that the policy has been cancelled from the very inception, yet, according to it no premium was paid. However, the insurance policy was not taken back by the appellant (insurance company) from the insured nor any intimation was given to the registration authority that there has been no effective insurance policy. Thus, by its own act the insurance company represented to the registration authority and third person that they were entitled to act on such cover note or policy and, thus, it has not absolved from liability to pay to the third party that is claimant in this case. However, insurance company could have proceeded to recover the amount from the owner Gangaram, R-2, the amount paid by it to cover the risk for which according to it no insurance policy existed. Such a view finds support from National Insurance Co. Ltd. Vs. Swaran Singh and Others, , of a three-Judge Bench case of Apex Court.

6. Thus, appeal is allowed while the insurance company is liable to pay the amount of compensation with interest to Mahendrasingh, R-l, as awarded by the Claims Tribunal below but it can proceed to recover the amount paid by it from Gangaram, R-2, the owner of the vehicle. Award is modified to that extent.