**(2012) 05 DEL CK 0160**

**In the Delhi High Court**

**Case No :** MAC. APP. 283 of 2005

United India Insurance Co. Ltd. APPELLANT

Vs

Satpal and Others RESPONDENT

**Date of Decision :** 03-05-2012

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 147(5), 149(1)

**Citation :** (2013) 4 ALLMR 44

**Hon'ble Judges :** J.R. Midha, J

**Bench :** Single Bench

**Advocate :** Sakshi Gupta, for the Appellant; Shahid Ali, for R-4, for the Respondent

**Final Decision :** Dismissed

## Judgement

J.R. Midha

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of `2,67,300/- has been awarded to claimants/respondents No. 1 and 2. The accident dated 30th April, 2003 resulted in the death of Master Gaurav. The deceased was survived by his parents who filed the claim petition before the Claims Tribunal. The Claims Tribunal awarded `2,67,300/- to the claimants. The award was passed jointly and severally against the appellant and respondents No. 2 and 3.

2. The learned counsel for the appellant has urged at the time of hearing of this appeal that the appellant is not liable to pay any compensation to the claimants on the ground that the insurance policy of the offending vehicle was cancelled before the accident and the intimation in that regard was sent to the insured as well as road transport authority. In the alternate, it is submitted that the recovery rights may be given to the appellant against respondents No. 3 and 4. The learned counsel for the appellant submits that the cheque issued by respondent No. 4 towards the premium for insurance of the offending vehicle was

dishonoured upon presentation due to insufficient funds whereupon the appellant cancelled the policy and intimated the same to respondent No. 4 vide notice dated 9th October, 2002. The appellant also intimated the cancellation to the regional transport authority vide letter dated 9th October, 2002. The Assistant Administrative Officer of the appellant appeared in the witness box as R3W1 and proved the dishonoured cheque as Ex. R3W1/B, cheque return memo as Ex. R3W1/C and Ex.R3W1/D, notice of cancellation of policy to respondent No. 4 and intimation of cancellation of policy to RTO dated 9th October, 2002 as Ex.R3W1/E and Ex.R3W1/F respectively.

3. The learned counsel for respondents No. 3 and 4 submits that the alleged notice of cancellation of policy was not received by respondent No. 4. It is submitted that the appellant has not placed on record the postal receipts and the AD card. It is further submitted that R3W1 was specifically asked to produce the postal receipt but he could not produce the same as there was no such receipt.

4. The law with respect to the liability of the insurance company in the event of dishonor of cheque towards the premium is well settled by the recent judgment of the Supreme Court in the case of United India Insurance Co. Ltd. Vs. Laxmamma and Others, in which this Court held that the insurance company is absolved from the liability if the policy of insurance has been cancelled and intimation of cancellation has reached before the accident. The findings of the Apex Court are reproduced hereunder:-

19. In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored 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 awards of compensation in respect thereof. 20. Having regard to the above legal position, insofar as facts of the present case are concerned, the owner of the bus obtained policy of insurance from the insurer for the period April 16, 2004 to April 15, 2005 for which premium was paid through cheque on April 14, 2004. The accident occurred on May 11, 2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated May 13, 2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on May 21, 2004. The cancellation of policy having been done by the insurer after the accident, the

 

insurer became liable to satisfy award of compensation passed in favour of the claimants.

21. In view of the above, the judgment of the High Court impugned in the appeal does not call for any interference. Civil appeal is dismissed. However, the insurer shall be at liberty to prosecute its remedy to recover the amount paid to the claimants from the insured. No order as to costs.

5. In the present case, the appellant has not proved that the intimation of cancellation of the policy reached the insured and the road transport authority before the accident. According to the appellant, the intimation of cancellation was sent to the insured as well as the road transport authority on 9th October, 2002 by registered AD letters but neither the postal receipts nor the AD card were placed on record. In cross-examination, R3W1 deposed that he can produce the same but still the postal receipts and the AD cards were not produced. In that view of the matter, the appellant would remain liable to satisfy the award passed in favour of the claimants. Following the judgment of the Supreme Court in United India Insurance Company Limited v. Laxmamma (supra), the appeal is dismissed. However, the appellant shall be at liberty to prosecute its remedy to recover the amount paid to the claimants from the insured.