
(2014) 11 SHI CK 0066
In the High Court Of Himachal Pradesh
Case No : FAO No. 529 of 2008

United India Insurance Company Ltd.

APPELLANT

Vs

Mohan Lal

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Constitution of India, 1950 — Article 142

Motor Vehicles Act, 1988 — Section 147, 147(5), 149, 149(1), 173

Citation : (2015) 2 ACC 755 : AIR 2015 HP 15 : (2015) 1 ShimLC 411

Hon'ble Judges : Mansoor Ahmad Mir, C.J

Bench : Single Bench

Advocate : Ashwani K. Sharma, Advocate for the Appellant; Poonam Gehlot, Advocate vice Anu Tuli, Romesh Verma and Lalit K. Sharma, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—Appellant-insurer has invoked the jurisdiction of this Court by the medium of this appeal in terms of Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the MV Act") and has called in question the award, dated 30th June, 2008, made by the Motor Accident Claims Tribunal-II, Solan, District Solan, H.P. (hereinafter referred to as "the Tribunal") in M.A.C. Petition No. 1-S/02 of 2006, titled as Mohan Lal versus Kishan Lal and others, whereby compensation to the tune of Rs. 7,14,000/- came to be awarded in favour of the claimant and the appellant-insurer was saddled with liability (hereinafter referred to as "the impugned award"), on the grounds taken in the memo of appeal.

2. The claimant and the drivers-cum-owners and the insurer of the scooter have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

Brief facts:

3. The claimant had claimed compensation to the tune of Rs. 10,00,000/-, as per

the break-ups given in the claim petition, on the ground that he became the victim of motor vehicular accident, which was caused by the driver, namely Shri Kishan Lal, while driving the car, bearing registration No. HP-01 A-0722, rashly and negligently on 23rd October, 2005, near Bye Pass Solan.

4. The respondents resisted the claim petition on the grounds taken in the respective memo of objections.

5. Following issues came to be framed by the Tribunal on 5th April, 2007:

"1. Whether the petitioner sustained injuries as a result of an accident involving vehicle bearing No. HP-01 A-0722 and scooter bearing No. HR-12 D-2329 due to rash and negligent driving of the offending vehicles by respondents No. 1 & 4?...OPP

2. If issue No. 1 is proved in affirmative, whether the petitioner is entitled for compensation, if so, to what amount?...OPP

3. Whether the petition is not maintainable?...OPR-1-2 & 4-5

4. Whether the petitioner is estopped by his own acts, deeds and conduct from filing the present petition?...OPR-1&2

5. Whether the accident took place due to rash and negligent driving of the Car by respondent No. 1, as alleged?...OPR-4&5

6. Whether the Car No. HP-01 A-0722 was not insured with the respondent No. 3?...OPR-3

7. Whether the petitioner has no cause of action against the respondents No. 4 & 5?...OPR-4&5

8. Whether the driver of the Car was not holding valid & effective driving licence at the time of accident?...OPR-3

9. Whether the registration certificate, fitness certificate and permit papers of the Car were not valid nor effective?...OPR-3

10. Whether the scooter was not insured with respondent No. 6?...OPR-6

11. Whether the driver of the scooter was not holding valid and effective driving licence at the time of accident?...OPR-6

12. Whether the scooter was not validly registered, if so, its effect?...OPR-6

13. Whether the petitioner was pillion rider on the scooter and the respondent No. 6 is not liable to pay compensation to the petitioner?...OPR-6

14. Relief."

Issue No. 1:

6. After scanning the evidence, oral as well as documentary, the Tribunal held

that the claimant has proved that the driver, Shri Kishan Lal, had driven the offending vehicle, i.e. car, bearing registration No. HP-01 A-0722, rashly and negligently on 23rd October, 2005 and hit the scooter, bearing registration No. HR-12D-2329, and the claimant sustained injuries. Accordingly, issue No. 1 was decided in favour of the claimant and against driver of the car, namely Shri Kishan Lal. The findings returned on this issue are not in dispute, are upheld.

Issues No. 3 to 13:

7. The findings returned on issues No. 3 to 13 are also not in dispute for the reason that the claimant, owners-cum-drivers and the insurer of the scooter have not questioned the impugned award on any count. Thus, the findings returned by the Tribunal on issues No. 3 to 13 are also upheld.

Issue No. 2:

8. The only dispute in this appeal is - whether the owner-cum-driver of the car is to satisfy the award for the reason that the insurer is not liable to pay?

9. Learned counsel for the appellant-insurer argued that the cover note, which was proved by the insurer, is on record as Ext. RW-1, was issued without depositing the premium amount, was cancelled, thus, the appellant-insurer is not liable.

10. The Tribunal, after scanning the evidence and the documents on the file, held that the risk was covered in view of the fact that insurance cover, Ext. RW-1, was subsisting on the date of accident, i.e. 23rd October, 2005.

11. I have gone through Ext. RW-1. It contains details of the entire insurance policy. According to Ext. RW-1, the insurance policy was effective from 16th September, 2005, to 15th September, 2006, and one of the conditions contained is "The Period of Validity of this cover note will expire on 15/9/06". Thus, the validity of the cover note was till 15th September, 2006.

12. The appellant-insurer has not proved that the factum of cancellation of the cover note was conveyed to the insured.

13. According to the learned counsel for the appellant-insurer, it is a case of fraud. He was asked to show whether any action was drawn against the alleged erring official. He was unable to answer.

14. The Apex Court in a case titled as New India Assurance Co. Ltd. versus Rula and others, reported in AIR 2000 Supreme Court 1082, has held that the insurer has to mandatorily intimate the owner by way of notice about the cancellation of insurance policy and if the accident occurs between the period till the cancellation is conveyed, it is the insurer, who is liable. It is apt to reproduce para 11 of the judgment herein:

"11. This decision, which is a 3-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the Insurance Policy in the

instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the issuance of the Policy on the date on which the accident took place. If, on the date of accident, there was a Policy of Insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of Insurance Policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party."

15. The matter again came up for consideration before the Apex Court in *Deddappa and Others Vs. The Branch Manager, National Insurance Co. Ltd.*, , and the same principle has been laid down. It is apt to reproduce paras 26 to 28 of the judgment herein:

"26. We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-a-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.

27. A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In *Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries*, , this Court held:

"We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme."

We, therefore, agree with the opinion of the High Court.

28. However, as the appellant hails from the lowest strata of society, we are of the opinion that in a case of this nature, we should, in exercise of our extraordinary jurisdiction under Article 142 of the Constitution of India, direct the Respondent No. 1 to pay the amount of claim to the appellants herein and recover the same from the owner of the vehicle viz., Respondent No. 2, particularly in view of the fact that no appeal was preferred by him. We direct accordingly."

16. In the case titled as *United India Insurance Co. Ltd. Vs. Laxmamma and Others*, , the Apex Court has discussed the law developed on the issue and ultimately held that if cancellation order is not made or if the accident occurs till the cancellation is made and conveyed, the insurer is liable. It is profitable to

reproduce para 19 of the judgment herein:

"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."

17. I have laid down the same principle in cases tilted as M/s New Prem Bus Service versus Laxman Singh & another, being FAO No. 316 of 2008, decided on 23rd May, 2014 and FAO No. 35 of 2009, titled as National Insurance Company Ltd. versus Smt. Anjana Sharma & others, being the lead case, decided on 4th July, 2014. It is apt to reproduce paras 15 and 16 of the judgment rendered in Anjana Sharma's case (supra) herein:

"15. Admittedly, the cover note was issued alongwith the insurance policy. The cover note and the insurance policy are Ext. RW-2/B & Ext. RW-2/A in M.A.C.P. No. 38-G/2004 and Ext. RW-3/B and Ext. RW-3/A in MACP RBT No. 68-G/2010/2004, respectively. While going through the insurance policy and the cover note, one comes to an inescapable conclusion that it was issued on 28th April, 2003 and was valid up to 27th April, 2004. But, were cancelled on 29th April, 2003, without mentioning any reason. It is nowhere mentioned in the cover note that the premium amount was not received. Further, there is no evidence on the file in support of the fact that the amount was not deposited.

16. Learned counsel for the appellant(s) was asked to show whether there is any evidence on the file to the effect that notice was given to the owner-insured about the cancellation of the insurance policy and the cover on 29th April, 2003, he failed to reply the same."

18. Viewed thus, the Tribunal has rightly returned findings on this issue at page No. 11. Accordingly, the findings returned by the Tribunal on issue No. 2 are upheld.

19. Having said so, I am of the considered view that the Tribunal has rightly saddled the appellant-insurer with liability and this appeal merits to be dismissed; is dismissed and the impugned award is upheld accordingly.

20. Registry is directed to release the awarded amount in favour of the claimant strictly as per the terms and conditions contained in the impugned award.
21. Send down the record after placing copy of the judgment on Tribunal's file.