Pradeep Kumar Jain

Vs

Citi Bank and Another

Civil Appeal No. 6618 of 1995

(S. Saghir Ahmeed, S. R. Babu JJ)

12.08.1999

JUDGMENT

RAJENDRA BABU, J.-

1. The appellant borrowed money after making certain initial payments for the purchase of a car from the first respondent Bank. He also obtained in respect of the car a policy of insurance from the Oriental Insurance Company covering the period from 21-1-1989 to 20-1-1990 and the policy was endorsed to indicate that the subject of hire-purchase would be payable by the Bank. The appellant issued 36 cheques in favour of the Bank, each of them for a sum of Rs. 2316 towards monthly instalments, to pay off the entire loan. He also issued two cheques in favour of the Oriental Insurance Company Limited towards insurance premium for two years beyond 20-1-1990. The appellant claimed that in view of the assurance given by the Bank that they would take policies for subsequent two years beyond 21-1-1990, the two cheques had been issued by him and the policy was to be automatically renewed in the name of the appellant with hire-purchase endorsement in favour of the Bank. The appellant took delivery of the car on 8-3-1989. On 15-8-1990 when the appellant was driving the car, he along with five inmates met with an accident on the Delhi-Jaipur National Highway. Not only his car was damaged but Shri R. D. Jain, Smt. Madhu Jain, Smt. Rukmani Jain, Master Ankit Jain and Master Rahul Jain, all occupants of the car, sustained injuries and, later on, they succumbed to the same. The appellant was under a shock for quite some time and on 5-6-1991 instructed the Bank not to encash the cheques towards instalments, to get the claim settled from the insurance company and to provide particulars of insurance for the period from 21-1-1990 to 20-1-1991. The Bank did not reply. The appellant claims that the Bank had grievously neglected duty in insuring the vehicle. The appellant made a claim before the National Consumer Disputes Redressal Commission (for short "the Commission") covering the loss of the car as well as damages payable towards those who died in the accident. The complaint before the Commission was based on the deficiency in service on the part of the first and second respondents inasmuch as he had suffered a loss to the extent of Rs. 1,55,000 being the market value of the car on the date of the accident and he was likely to be fastened with the liability of the third party claims to the tune of Rs. 18 lakhs filed by the legal representative of the deceased occupants of the car before the Motor Accident Claims Tribunal, Rewari and to keep the appellant indemnified against all such claims. He also claimed a sum of Rs. 1 lakh for mental agony and suffering caused to him due to gross negligence of the opposite parties to discharge their services.

2. The Commission, however, felt that the question of payment of compensation arising out of fatal accident would fall within the ambit of Section 165 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), and following the decision of this Court in Chairman, Thiruvalluvar Transport Corpn. v. Consumer Protection Council ((1995) 2 SCC 479 : JT (1995) 2 SC 441) did not

advert to the allegations or material on record in that regard. The Commission also noticed that a claim by the legal heirs of the deceased occupants had already been made before the appropriate Tribunal. Thus the Commission refrained from going to the liability of the insurer for the third party claims or grant any relief to the appellant.

3. On the question of the manner in which the first respondent Bank treated the two cheques, the stand of the Bank is that it may be assumed for the purpose of proceedings before the Commission without prejudice to their rights in other proceedings that the premium cheques were not delivered by the Citi Bank to the insurance company although undertaken by Citi Bank and thus there has been negligence on the part of Citi Bank and there is deficiency of service. Therefore, the Commission took the view that the loss payable by the insurer arising out of the accident to the vehicle is Rs. 76,990 on the basis of the sum assured for the first year less 10% depreciation for one year and ordered accordingly. The Commission proceeded on the basis that if the first respondent had not neglected in its duty to take the renewal of the policy for the next year and had, in fact, got the policy renewed then the insurance company would have settled the claim within a reasonable period and thus the concession made by the first respondent would have to be taken to its logical end. The Commission passed an order to that effect.

4. In this Court the contention put forth before us now in this appeal is that the Commission should have proceeded further and held that the Bank is liable for damages payable by the appellant for want of insurance of the vehicle as determined by the Motor Accident Claims Tribunal. Inasmuch as insurance policy had not been taken out, the appellant has been left high and dry and, therefore, he had to meet that damage.

5. Under Section 146 of the Act there is an obligation on the owner of a vehicle to take out an insurance policy as provided under Chapter XI of the Act. If any vehicle is driven without obtaining such an insurance policy it is punishable under Section 196 of the Act. The policy may be comprehensive or only covering third parties or liability may be limited. Thus when the obligation was upon the appellant to obtain such a policy, merely by passing of a cheque to be sent to the insurance company would not obviate his liability to obtain such policy. It is not clear on the record as to the nature of the policy that had been obtained by the appellant earlier when he purchased the vehicle and which was to be renewed from time to time. It is also not clear whether even in the case of renewal, a fresh application has to be made by the appellant or on the old policy itself an endorsement would have been made. In the absence of such material on record, and the nature of the insurance policy or any anxiety shown by the appellant in obtaining the policy as he could not ply such vehicle without such an insurance policy being obtained, he cannot claim that merely because he had passed on the cheques, the entire liability to pay all damages arising would be upon the first respondent.

6. In the case of life insurance policy certain sum is agreed to be paid by the insurance company in the event of the death of the insured or a contingency arising as indicated in the policy. The obligation is then on the insured to pay the premiums periodically. There is no other obligation upon him. In the case of a motor vehicle, the risk to be covered is not only in respect of a vehicle but also towards the injury to others or damage caused to property arising out of an accident. In such an event, when the policy is renewed or a fresh policy is applied for, an application has to be given and it is to be indicated whether any claim had been made in the previous year or not and to furnish appropriate material as regards the valuation of the vehicle. It can also be made clear as to the nature and extent of the risk covered whether it is only third party or comprehensive or otherwise. The obligation under the Act is only at least to cover third party risk. Thus mere payment of premium

could not result in an automatic renewal of the policy. In the circumstances, we find that the appellant also had certain duties to discharge in the matter of obtaining insurance policy and cannot merely put the blame on the first respondent.

7. In the circumstances of the case, we find that there is not enough material to grant relief sought for by the appellant and, therefore, we reject the claim made by the appellant insofar as payment of damages awarded by the Tribunal in the accident claim is concerned. Insofar as the claim made and settled before the Commission is concerned, the same proceeded on the basis of concession and, therefore, we do not think that can be made the foundation to grant the relief as sought for by the appellant. Thus appeal stands dismissed without any order as to costs.