SUPREME COURT OF INDIA

United India Insurance Co. Ltd.

Vs.

Laxmamma

C.A.No.3589 of 2012

(R.M. Lodha and H.L. Gokhale JJ.)

17.04.2012

JUDGMENT

R.M. LODHA, J.

1. Leave granted.

2. The only question that arises for consideration in this appeal by special leave is: whether the appellant, United India Insurance Company Limited (insurer) is absolved of its obligations to the third party under the policy of insurance because the cheque given by the owner of the vehicle towards the premium got dishonoured and subsequent to the accident, the insurer cancelled the policy of insurance.

3. The above question arises in this way. M. Nagaraj (husband of respondent no. 1 and father of respondent nos. 2 and 3) was travelling in a bus bearing registration no. KA 018116 on May 11, 2004. At about 8.50 a.m. on that day due to negligent application of brake by the bus driver, the back door of the bus suddenly opened and M. Nagaraj standing near the door fell down. He sustained grievous injuries and subsequently died. The respondent nos. 1 to 3, to be referred as claimants, filed a claim petition before the Motor Accident Claims Tribunal, Bangalore (for short, b Tribunalb) seeking compensation of Rs. 15 lakhs. The present appellant, insurer was impleaded as respondent no. 2 while the owner of the bus was impleaded as respondent no. 1. The owner and the insurer contested the claim petition on diverse grounds. The insurer raised the plea in the written statement that the insurance policy dated April 14, 2004 issued by it covering the said bus for the period April 16, 2004 to April 15, 2005 was not valid as the premium was paid through cheque

and the cheque got dishonoured and, therefore, there was no liability on it to cover the third party risk.

4. The Tribunal on recording the evidence and after hearing the parties held that the claimants were successful in proving that on May 11, 2004 at 8.50 a.m. the deceased M. Nagaraj was travelling in the bus and he fell down from the bus through the door by sudden application of brake negligently by the driver and died due to the injuries sustained in that accident. The Tribunal also recorded the finding of fact on examination of the documentary and oral evidence that cancellation of policy because of non-payment of the premium was done by the insurer after the accident had taken place and intimation of cancellation was given to the owner on May 21, 2004 whereas accident took place on May 11, 2004. The Tribunal, thus, held that the insurer was liable to the claimants. The Tribunal in its award dated June 28, 2006 held that claimants were entitled to compensation in the sum of Rs. 6,01,244/- and apportioned that amount amongst claimants. Aggrieved by the award of the Tribunal, the insurer preferred appeal before the High Court. The High Court dismissed the insurerb s appeal on November 11, 2008. It is from this order that the present appeal has arisen.

5. Mr. A.K. De, learned counsel for the appellant strenuously urged that having regard to the undisputed fact that the cheque issued by the owner of the vehicle towards the premium for insurance of vehicle was dishonoured, the contract of insurance became void and the insurer could not be compelled to perform its part of promise under the policy. He submitted that no liability can be fastened on the insurers qua third party if the policy of insurance is rendered void for want of consideration to the insurer. Learned counsel submitted that the view taken by this Court inOriental Insurance Co. Ltd. v. Inderjit Kaur and others[1] has been diluted by the later decisions of this Court in the case of National Insurance Co. Ltd. v. Seema Malhotra and others[2] andDeddappa and others v. Branch Manager, National Insurance Co. Ltd.[3]. In the alternative, learned counsel for the insurer submitted that if the Court holds that the insurer is liable to pay compensation to the claimants, the amount so paid by the insurer to the claimants must be allowed to be recovered from the insured.

6. Mr. P.R. Ramasesh, learned counsel for respondent no. 4 (owner) supported the view of the High Court. He submitted that on the date of the accident, the policy was subsisting and the liability of the insurer continued and, therefore, the insurer cannot recover the amount paid to the claimants from the insured.

7. Section 64-VB of the Insurance Act, 1938 (for short, b Insurance Actb) provides as under :

64-VB. No risk to be assumed unless premium is received in advance.-

(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation.- Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurers, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government, may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.

> (6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer.
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> The above provision states that no risk is assumed by the insurer unless premium payable is received in advance.

8. The Motor Vehicles Act, 1988 (for short, b the M.V. Actb) in Chapter XI deals with insurance of motor vehicles against third party risks. Section 145 in that Chapter provides for definitions: (a) authorised insurer, (b) certificate of insurance, (c) liability, (d) policy of insurance, (e) property, (f) reciprocating country and (g) third party.

9. Section 146 mandates insurance of a motor vehicle against third party risk. Inter alia, it provides that no person shall use the motor vehicle in a public place unless a policy of insurance has been taken with regard to such vehicle complying with requirements as set out in Chapter XI. The owner of vehicle, thus, is statutorily mandated to obtain insurance for the motor vehicle to cover the third party risk except in exempted and exception categories as set out in Section 146 itself.

10. Section 147 makes provision for requirements of policies and limits of liability. Sub-section (5) thereof is relevant for the present purposes which reads as follows :

> S. 147. b Requirements of policies and limits of liability.-
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> (1)) to (4) xxx xxx xxx xxx xxx xxx
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> (5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

11. Section 149 deals with the duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. Sub-section (1) which is relevant for the present purposes reads as under:

> S.149.- Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.- (1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any

> such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

12. The above provisions came up for consideration in the case of Inderjit Kaur1. That was a case where a bus met with an accident. The policy of insurance was issued by the Oriental Insurance Company Limited on November 30, 1989. The premium for the policy was paid by cheque but the cheque was dishonoured. The insurance company sent a letter to the insured on January 23, 1990 that the cheque towards premium had been dishonoured and, therefore, the insurance company was not at risk. The premium was paid in cash on May 2, 1990 but in the meantime on April 19, 1990 the accident took place, the bus collided with the truck and the truck driver died. The truck driverb s wife and minor sons filed claim petition. A three-Judge Bench of this Court noticed the above provisions and then held in paragraphs 9, 10 and 12 (pages 375 and 376) as under :

> 9. We have, therefore, this position. Despite the bar created by Section 64-VB 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.
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> 10. 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.

> 12. It must also be noted that it was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64-VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant.

13. In Inderjit Kaur1, the Court invoked the doctrine of public interest and held that the insurance company was liable to indemnify third parties in respect of the liability which the policy covered despite the bar created by Section 64-VB of the Insurance Act. The Court did leave open the question of insurerb s entitlement to avoid or cancel the policy as against insured when the cheque issued for payment of the premium was dishonoured.

14. In New India Assurance Co. Ltd. v. Rula and others[4], the Court was concerned with a question very similar to the question posed before us. That was a case where the insurance policy was issued by the New India Assurance Co. Ltd. in terms of the requirements of the M.V. Act but the cheque by which the owner had paid the premium bounced and the policy was cancelled by the insurance company but before the cancellation of the policy, accident had taken place. A two-Judge Bench of this Court considered the statutory provisions contained in the M.V. Act and the judgment in Inderjit Kaur1. In paragraph 13 (at page 200), the Court held as under:

> 13. This decision, which is a three-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 the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third partyb
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> (Emphasis supplied)

15. In Seema Malhotra2, the Court was concerned with the question whether the insurer is liable to honour the contract of insurance where the insured gave a

cheque to the insurer towards the premium amount but the cheque was dishonoured by the drawee bank due to insufficiency of funds in the account of the drawer. In the case of Seema Malhotra2, the above question arose from the following facts : the owner of a Maruti car entered into an insurance contract with National Insurance Company Limited on December 21, 1993; on the same day the owner gave a cheque of Rs. 4,492/- towards the first instalment of the premium; the insurance company issued a cover note as contemplated in Section 149 of the M.V. Act; the car met with an accident on December 31, 1993 in which the owner died and the car was completely damaged; on January 10, 1994 the bank on which the cheque was drawn by the insured sent an intimation to the insurance company that the cheque was dishonoured as there were no funds in the account of the drawer and on January 20, 1994 the business concern of the owner was informed that the cheque having been dishonoured by the bank, the insurance policy is cancelled with immediate effect and the company is not at risk. The widow and children of the owner filed a claim for the loss of the vehicle with the insurance company. When the claim was repudiated, they moved the State Consumer Protection Commission (for short, b Commissionb). The Commission rejected the claim of the claimants and held that insurer was justified in repudiating the contract as soon as cheque got bounced. The claimants moved the Jammu and Kashmir High Court. The High Court reversed the order of the Commission and held that the insurance company chose to cancel the insurance policy from the date of issuance of communication and not from the date the cheque was issued which got bounced. The matter reached this Court from the above judgment of the High Court. The Court referred to Section 64-VB of the Insurance Act, Sections 25, 51,52,54 and 65 of the Indian Contract Act and the decisions of this Court in Inderjit Kaur1 and Rula4 and held (at pages 156 and 157) as under :

> 17. In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.
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> 18. Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonored by the bank concerned the insurer need not perform his part of the promise. The

> corollary is that the insured cannot claim performance from the insurer in such a situation.
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> 19. Under Section 25 of the Contract Act an agreement made without consideration is void. Section 65 of the Contract Act says that when a contract becomes void any person who has received any advantage under such contract is bound to restore it to the person from whom he received it. So, even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonored, the insurer is entitled to get the money back.
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> 20. However, if the insured makes up the premium even after the cheque was dishonored but before the date of accident it would be a different case as payment of consideration can be treated as paid in the order in which the nature of transaction required it. As such an event did not happen in this case, the Insurance Company is legally justified in refusing to pay the amount claimed by the respondents.

16. In Deddappa3, the Court was concerned with the plea of the insurance company that although the vehicle was insured by the owner for the period October 17, 1997 to October 16, 1998 but the cheque issued there for having been dishonored, the policy was cancelled and, thus, it was not liable. That was a case where for the above period of policy, the cheque was issued by the owner on October 15, 1997; the bank issued a return memo on October 21, 1997 disclosing dishonour of the cheque with remarks fund insufficient and the insurance company, thereafter, cancelled the policy of insurance by communicating to the owner of the vehicle and an intimation to the concerned RTO. The accident occurred on February 6, 1998 after the cancellation of the policy.

17. The Court in Deddappa3 again considered the relevant statutory provisions and decisions of this Court including the above three decisions in Inderjit Kaur1, Rula4 and Seema Malhotra2 . In para 24 (at page 601) of the Report, the Court observed as under:

> 24. We are not oblivious of the distinction between the statutory liability of the insurance company vis-C -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.

Then in para 26 (at page 602), the Court invoked extraordinary jurisdiction under Article 142 of the Constitution of India and directed the insurance company to pay the amount of claim to the claimants and recover the same from the owner of the vehicle.

18. We find it hard to accept the submission of the learned counsel for the insurer that the three-Judge Bench decision in Inderjit Kaur1 has been diluted by the subsequent decisions in Seema Malhotra2 and Deddappa3. Seema Malhotra2 and Deddappa3 turned on the facts obtaining therein. In the case of Seema Malhotra2, the claim was by the legal heirs of the insured for the damage to the insured vehicle. In this peculiar fact situation, the Court held that when the cheque for premium returned dishonored, the insurer was not obligated to perform its part of the promise. Insofar as Deddappa3 is concerned, that was a case where the accident of the vehicle occurred after the insurance policy had already been cancelled by the insurance company.

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 dishonored, 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.