

RAJASTHAN HIGH COURT

Tipu

Vs.

New India Assurance Co. Ltd.

C.W.P. No. 5199 of 1990

(Sunil Kumar Garg, J.)

02.01.2003

ORDER

Sunil Kumar Garg, J. –

1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondent on 11-12-90 with a prayer that by an appropriate writ, order or direction, the communication dtd. 27-12-1989 (Annex. 3) by which the respondent informed the petitioner that in respect of cover note dtd. 21-12-89 (Annex. 1), premium was not received and, therefore, the same was going to be cancelled and the communication dtd. 17-1-90 (Annex. 4) by which cover note (Annex. 1) dtd. 21-12-89 was cancelled, be quashed and set aside.

2. The facts as put forward by the petitioner are as under:

(i) That Sri Ambalal, husband of the petitioner (hereinafter referred to as the deceased) owned a Fiat Car having registration No. RJN 5121. The deceased got the above Fiat Car insured with the New Indian Assurance Company Ltd. for a period of one year from 23-12-1989 to 22-12-1990, on 21-12-89 and in lieu of premium he gave a cheque of Rs. 1975/- to Sri N. P. Khandelwal, an authorised agent of the respondents. The authorised agent Sri N. P. Khandelwal in turn issued a cover note being Cover Note No. DLN 945127 on 21-12-89 (Annex. 1) for insuring Fiat Car No. RJN 5121.

(ii) That the further case of the petitioner is that deceased went to Mehsana (Gujarat) and from there he left for Unja (Gujarat) on 25-12-89 by the above Fiat Car which was insured by the respondent-Company. Unfortunately, on the way from Mehsana to Unja, a Truck No. RNM 8067 collided with the Fiat Car

No. 5121 as a result of which deceased died.

(iii) That further case of the petitioner is that through letter dtd. 27-12- 1989 (Annex. 2), the Branch Manager of the New India Assurance Company Ltd., Mehsana was also informed by one of the relatives of the deceased Ambalal.

(iv) That thereafter a letter dtd. 27-12-89 (Annex. 3) was received by the petitioner stating that the cover note (Annex. 1) was going to be cancelled.

(v) That the further case of the petitioner is that the cheque which was given by the deceased to the respondent-Company was presented in the bank on 4-1-1990 and since before that the deceased had already expired, therefore, the Bank did not encash the cheque and since the bank had refused to encash the cheque on account of death of the deceased, therefore, through letter dtd. 17-1-90 (Annex. 4), the cover note (Annex. 1) was cancelled by the respondents. Hence, this writ petition with the abovementioned prayer.

3. In this writ petition, the main submission of the learned counsel for the petitioner is that after issuance of cover note dtd. 21-12-89 (Annex. 1), the contract of insurance between the deceased and the respondent-Company was complete and therefore, cancellation of cover note on the ground that no payment was received by the respondent-Company is wrong. Apart from this the cheque itself was presented in the Bank by the respondents on 4-1-90 i.e. after the death of the deceased and therefore, they could not get cheque encashed earlier and for that the petitioner could not be held responsible. Hence, the writ petition be allowed.

4. Reply to the writ petition was filed by the respondents admitting that the cover note dtd. 21-12-89 was issued by Mr. N. P. Khandelwal, but on 21-12-89 Cheque No. 0800206 was given to Sri Khandelwal and this fact was noted down on the renewal notice (Annex. R/1). It was further submitted by the respondents that the deceased forwarded another ante-dated Cheque No. CE 0800208 instead of Cheque No. CE 0800206. Further through the Cheque No. CE 0800207 the petitioner's husband had withdrawn a sum of Rs. 35,000/- from the State Bank of Bikaner and Jaipur, Branch Sanchore on 22-12-89 and the Cheque No. CE 0800208 was issued after 22-12-89 though ante dated as 21-12-89. Further case of the respondents is that payment of Cheque No. CE 0800208 was not made on account of death of Ambalal and the Cheque No. CE 0800206 dated 21-12-89 was not forwarded to the respondents and another ante-dated Cheque No. CE 0800208 was handed over to the agent Mr. Khandelwal on 26-12-89 and the accident had already taken place on 25-12-89 and,

therefore, in no circumstances the Insurance Company was liable and hence, the writ petition be dismissed.

5. Heard the learned counsel for the parties and perused the material available on record.

6. A preliminary objection has been raised by the learned counsel for the respondents that the writ petition is not maintainable because the petitioner had equally efficacious alternative remedy and for that reliance has been placed on *LIC of India v. Asha Goel*.

¹ The law laid down in the case of *LIC of India v. Asha Goel* (Supra) is settled principle of law but looking to the fact that this writ petition was filed on 11-12-90 and now 12 years have elapsed, it would not be proper to throw the present writ petition simply on the ground that alternative remedy was available. It may further be stated here that as principle, alternative remedy bars the jurisdiction of High Court under Article 226 of the Constitution of India, but that limitation is not absolute and in exceptional cases, even there is alternative remedy, the writ lies and since in the present case, 12 years have elapsed, therefore, this case should be decided on merits instead of throwing away the writ petition on the ground of alternative remedy. For that judgment of this Court in the case of *Project Manager v. Authority under the Payment of Wages Act, reported in* ² may be referred to wherein it has been held as under:

"Constitution of India, Article 226 - Alternative remedy - Alternative remedy not absolute bar - Petitions filed as back as in 1991 - Not proper to throw them away after seven years on ground that alternative remedy was available."

For that proposition, reliance may be placed on the following case-laws also:

(i) *L. Hirday Narain v. Income Tax Officer*. ³

(ii) *Bal Kishan v. Dist. Judge, Pali*. ⁴

Thus, the plea of the respondents about maintainability of writ petition on the ground of alternative remedy stands rejected.

7. That from perusing the letter dtd. 17-1-90 (Annex. 4), following facts have emerged:

(i) That the Development Officer of the respondent-Company issued cover note No. DLH 945127 (Annex. 1) on 21-12-89 to the petitioner's husband.

(ii) That the Development Officer also received a Cheque No. 0800208 dtd. 21-12-89 of State Bank of Bikaner and Jaipur, Branch Sanchore from the deceased.

(iii) That the cheque was returned by the bank without encashment an endorsement that because of death of the deceased who issued the cheque, the payment from his account was stopped.

(iv) That since no payment was received in pursuance of Cheque No. 0800208 dtd. 21-12-89, therefore, cover note dtd. 21-12-89 (Annex. 1) was cancelled.

8. That a bare perusal of letter dtd. 17-1-90 (Annex. 4) reveals a different story than the one which has been developed by the respondents in their reply and in the letter dtd. 17-1-90 (Annex. 4), there is no mention of Cheque No. 0800206 and 0800207. The very crucial point which has been mentioned in the letter dtd. 17-1-90 (Annex. 4) is that payment of cheque was stopped because of death of the deceased and it was not the case of dishonor of cheque in question.

9. The pertinent question which arises for consideration is whether in the facts and circumstances just mentioned above and especially taking into consideration the fact that cover note (Annex. 1) was issued by the respondents on 21-12-89 on the basis of cheque given by the deceased and the accident took place on 25-12-89, the Insurance Company was liable or not or whether under such circumstances the respondents had rightly cancelled the cover note dtd. 21-12-89 (Annex. 1) issued to the deceased through letter dtd. 17-1-90 (Annex. 4) or not.

COVER NOTE AND POLICY OF INSURANCE : A DISTINCTION

10. The term "cover note" has not been defined in the Motor Vehicles Act, 1988 (hereinafter referred to as the Act of 1988). When the Insurance Company accepts premium and issues a certificate of insurance, it becomes a concluded contract of insurance on the usual terms and conditions contained in the printed policies of the Insurance Company.

11. The usual form in which interim insurance is granted is by a document known as a cover note. Normally a cover note incorporates the terms and conditions of the insurer's standard form of policy, either by express reference or by reference to a signed proposal which in terms incorporates the standard form; otherwise, if the proposer is to be bound by the standard terms and conditions, it must be shown that in some other way he has agreed to accept them. Subject to such an incorporation of the standard terms and conditions, a cover note is a contract of insurance distinct from the

contract comprised in the policy, even where a policy is in fact issued; accordingly, even though the cover note is superseded by the subsequent issue of a policy, the rights and liabilities of the parties in respect of any loss which happens during the currency of the cover note normally fail to be determined by reference to the terms of the cover note, not to the terms of the subsequent policy, especially if the latter document introduces a new condition of which the insurer had no knowledge.

12. Thus, it is held that cover note serves the same purpose as the policy of insurance serves.

13. It may be stated that the present case is not a case of dishonour of cheque as already stated above. The Delhi High Court in the case of *Chandan v. Kanwar Lal, reported in* ⁵ has held that cheque given towards premium if it was dishonoured, the Insurance Company would not be liable. The view of Delhi High Court was further approved by the Hon'ble Supreme Court in the case of *United India Insurance Co. Ltd. v. Ayeb Mohd., reported in* ⁶

14. In the present case, from perusal of letter dtd. 17-1-90 (Annex. 4), it is very much clear that the respondents cancelled the cover note (Annex. 1) for the reason that the payment was not made by the Bank on the ground that the deceased had died. Thus from every point of view, it is not the case of dishonor of cheque. Had there been a case of dishonor of cheque, then position would have been different one.

15. So far as the theory of the respondents that on 21-12-89 Cheque No. 0800206 was issued first and thereafter Cheque No. 0800208 was issued and the same was ante-dated is concerned, it cannot be accepted because of the fact that cover note (Annex. 1) was issued by the respondents in favor of the petitioner on 21-12-89 on the basis of cheque issued by the deceased and the same was not dishonored in any manner. In these circumstances, the case developed by the respondents in their reply cannot be accepted. Apart from this, an affidavit was filed by Heera Lal on 17-12-93 on behalf of the respondents and in that affidavit also, it was not stated that the cheque was presented in the bank and it was returned with an endorsement "insufficiency of fund". Therefore, this affidavit would also not be helpful to the learned counsel for the respondents.

16. Apart from this, in the present writ petition validity of letter dtd. 27- 12-89 (Annex. 3) and letter dtd. 17-1-90 (Annex. 4) are going to be adjudged.

17. The Hon'ble Supreme Court in the case of *Mohinder Singh Gill v. The Chief*

Election Commissioner, reported in ⁷ has observed as under :

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out."

18. Placing reliance on above observation of the Hon'ble Supreme Court in the case of Mohinder Singh Gill (Supra), in the present case since in the letter dtd. 17-1-90 (Annex. 4), the fact of issuing Cheque No. 0800206 was not mentioned, therefore, it could not be taken into consideration and reliance should be placed on the letter dtd. 17-1-90 (Annex. 4). From this point of view also, the case developed by the respondents later on should be not accepted.

19. After accepting the cheque and by issuing cover note (Annex. 1), it can be taken for granted that the respondents accepted the proposals for insurance and contract of Insurance between the deceased and the respondent was complete though regular policy was not issued. Thus, by issuing the cover note dtd. 21-12-89 (Annex. 1), a legal right has accrued in favor of the petitioner and the petitioner is entitled to the relief sought for.

20. For the reasons mentioned above this writ petition deserves to be allowed and the impugned letter dtd. 27-12-89 (Annex. 3) and letter dtd. 17-1-90 (Annex. 4) are liable to be quashed and set aside and it is further held that on the basis of cover note dtd. 21-12-89 (Annex. 1), on 25-12-89, the policy of insurance was subsisting.

Accordingly, this writ petition is allowed and the impugned letter dtd. 27-12-89 (Annex. 3) and letter dtd. 17-1-90 (Annex. 4) are quashed and set aside and it is held that in pursuance of cover note dtd. 21-12-89 (Annex. 1), on 25-12-89, the policy of insurance was subsisting.

Cost made easy.

Petition allowed.

Cases Referred.

1. (2001) 1 Acc RCJ (SC) 806: (AIR 2001 SC 549)
2. (1998) 3 WLC 435
3. AIR 1971 SC 33

4. (1998) 1 SC LR 17
5. 1989 Acc CJ 816
6. (1992) 2 Acc CJ 650
7. AIR 1978 SC 851