

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 6th January, 2012
Pronounced on: 17th January, 2012

+ **MAC.APP. 157/2010**

ORIENTAL INSURANCE CO LTD. Appellant
Through: Mr. L. K. Tyagi, Adv.
versus

BALWANT SINGH NEGI & ORS. Respondents
Through: Mr. Shahid Ali Adv. with
Mr. Mohd. Shariq Adv.,
Mr. Anwar Khalil, Adv.for R-4.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The question for determination in the Appeal is whether the Oriental Insurance Company Limited had cancelled the policy on account of dishonour of the cheque and therefore could avoid the liability to pay the compensation.
2. A compensation of ₹1,93,000/- was awarded by a judgment dated 23.12.2009 for the death of a young boy Narain Singh, aged 16 years in an accident which took place on 25.01.1996. The Tribunal while holding that the driver and the owner of the truck number DNG 0515 are liable to pay the compensation which is to be indemnified by the Appellant, rejected the Appellant's contention that the Insurance policy had been

cancelled on account of dishonour of the cheque. The Appellant was fastened with the liability to pay the compensation. The conclusion reached by the Tribunal while making the Appellant liable is extracted hereunder:-

“25. In the case in hand, it has not been proved on record by filing documents that intimation for cancellation of the policy was given to R2 as R3W1 has admitted that no such document has been filed on record. Considering the ratio of case laws filed by counsel for petitioners and the facts proved on record, I am of the considered opinion that R3 cannot avoid liability to pay compensation on the ground that cheque of premium was dishonoured. Therefore, R3 is liable to pay compensation.”

3. First of all, let me notice some admitted facts. The accident which resulted in fatal injuries to Narain Singh was caused on 25.01.1996. The Insurance policy which was issued by the Appellant by cover note number 496272 was valid for the period 04.10.1995 to 03.10.1996. A petition bearing Suit No.313/1997 was dismissed for non prosecution, by order dated 15.01.1998 passed by the Tribunal. The Second Claim Petition bearing number 169/1998 was dismissed for non prosecution by order dated 23.04.2002. The plea with regard to non maintainability of the third Petition was raised before the Tribunal when the third Petition being Suit No.391/2002 (new number 155/2008) was filed. The said contention came to be rejected by the Tribunal by order dated 21.04.2007.

4. In the first written statement filed by the Appellant a plea was taken that the offending vehicle was insured by policy number 214900/1995/01435 for the period 25.07.1994 to 24.07.1995 and the policy did not cover the date of the accident i.e. 25.01.1996. The written statement was later amended by the Appellant. It came out with the plea that the vehicle number DNG 0515 was covered by the Appellant by cover note no.496272 and policy number 271201/1996/1597. It was averred that the Fourth Respondent Smt. Balvinder Kaur made a proposal dated 04.10.1995 to the Appellant for issuance of a Insurance policy in respect of the vehicle number DNG 0515. Instead of making the payment of the premium in cash, she made the payment by a cheque for a sum of ₹5985/- which was dishonoured on presentation. The Appellant immediately intimated the Fourth Respondent about the dishonour of the cheque and cancellation of the policy by way of a registered letter. Since there was no contract of Insurance, due to the issuance of policy being *void ab-initio*, the Insurance Company was absolved of its liability to indemnify the insured.
5. During evidence before the tribunal the Fourth Respondent herself filed Affidavit Ex.R2W1/4 and also entered the witness box. She deposed that the policy was issued by the Appellant after receiving cheque number 615785 for an amount of ₹ 5988/-. She testified that on issuance of notice under Section 133 of the M.V. Act photocopies of the documents pertaining to

the truck number DNG 0515 were produced before the police.

6. In cross-examination, the Fourth Respondent deposed that she was not aware of the policy issued for the earlier period. She denied the suggestion that the policy Mark A was forged. In cross-examination by the Insurance Company, the witness testified that the Insurance Company never informed them about the dishonour of the cheque. She did not remember from whose account the cheque was issued. She denied the suggestion that she was duly intimated by the Insurance Company regarding the cancellation of the policy on account of dishonour of the cheque.
7. The Appellant filed an Affidavit Ex.R3W1/A of its Senior Branch Manager Mr. P.C. Jain who admitted the genuineness of the cover note Mark A by proving another similar copy Ex.R3W1/A. The witness deposed that the cheque presented for payment through Vijaya Bank was returned dishonoured. The witness testified that on receipt of information from the Bank, the Appellant intimated the Fourth Respondent about the cancellation of the policy. The witness deposed that the old record has been weeded out after a period of three years and thus, the record in respect of the policy was not available.
8. Before appreciating the facts further, let me deal with the legal position on the subject. In *Daddappa & Ors. v. Branch Manager, National Insurance Company Limited*, (2008) (2)

SCC 595; the Supreme Court considered the judgment in *Oriental Insurance Company Limited v. Inderjit Kaur*, (1998) 1 SCC 371, *New India Assurance Company Limited v. Rula*, (2000) 3 SCC 195 and held that if an insurance policy is cancelled on account of dishonour of cheque and the insured as well as the RTO are informed about the same, the third party would not be entitled to get the compensation from the Insurance Company as they are liable only so long as the policy subsisted.

9. Thus, the position would be as held by this Court in *National Insurance Company Limited v. Reshmi & Ors.*, MAC APP. 460/2011 decided by this Court separately on 17th January, 2012 that if the insured is not informed about the dishonour of the cheque, the Insurance Company cannot escape liability to the third party as well as to the insured. If the insured is informed about the dishonour of the cheque and an intimation in this regard is also given to the RTO as provided under Section 147 (4) of the Motor Vehicles Act (the M.V. Act), the Insurance Company would not be liable to the third party. At the same time, if the insured is informed but no intimation is given to the RTO, the Insurance Company would be liable to the third party with the right of recovery against the insured.
10. As has been stated earlier, in the first written statement the Insurance Company did not take the plea that the policy was cancelled on account of non-payment. Rather, the plea was that

the policy did not cover the period of insurance. The policy alleged to be valid for the period 25.07.1994 to 24.07.1995 in respect of the vehicle number DNG 0515 has not been placed on record by the Appellant. Subsequently, i.e. after more than two years of filing the first written statement, an amended written statement was filed on 13.08.2005 where a plea was taken for the first time that the policy was cancelled for dishonour of the cheque and that the Fourth Respondent was duly intimated about the same. No detail of the intimation was given in the amended written statement. The Appellant was silent if any intimation was sent to the RTO. However, when P.C. Jain, Senior Branch Manager filed his Affidavit Ex.R3W1/A, the case was set up that intimation was sent to the Fourth Respondent. It was also testified that the record pertaining to the policy was weeded out being an old record.

11. The Learned counsel for the Appellant took me through Rule 147 of the Central Motor Vehicles Rules which lays down that that the Insurance Company is under obligation to keep the record in respect of the policies only for a period of three years. It cannot be disputed that old records have to be weeded out and a certain timeframe has been given in the Rules. But then, the question arises as to on what basis the Appellant Insurance Company took the plea that the cheque in respect of the policy was dishonoured.
12. The Appellant relies on statement of account Ex. R3W1/2

where a cheque for ₹ 5988/- is shown to have been returned on 08.11.1995. A certificate Ex.R3W1/3 is also issued by Senior Branch Manager to the effect that cheque number 615565, in respect of the cover note 496272, for insurance of vehicle number DNG 0515, was dishonoured by the Bank. The number of cheque came for the first time in this certificate. It is not borne out from the record as to on what basis this certificate was prepared. The Fourth Respondent deposed that she had issued a cheque bearing number 615785. No co-relation between the cheque issued by the Fourth Respondent and the statement of account Ex.R3W1/2 has been made. In the absence of any record on the basis of which the certificate Ex.R3W1/3 was prepared the Appellant cannot plead that the cheque issued by Fourth Respondent was dishonoured.

13. It is therefore difficult to conclude that the Insurance Company has been able to discharge the onus that the cheque issued by the Fourth Respondent was dishonoured. The Appellant, therefore, cannot be permitted to avoid its liability to indemnify the insured.
14. The Appeal, therefore, has to fail. The Appeal is dismissed in above terms. No costs.
15. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 17, 2012/vk