

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

Date of decision: 17th September, 2012

+ **MAC.APP. 422/2012**

RELIANCE GENERAL INSURANCE COMPANY LTD..... Appellant
Through: Mr. Sameer Nandwani, Adv.

versus

SONALI JAIN & ORS. Respondents
Through: Mr. Bhupesh Narula, Adv. for R-1 to R-3.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Reliance General Insurance Company Limited impugns a judgment dated 06.02.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ₹9,94,100/- in favour of Respondents No.1 to 3 for the death of Pramod Kumar, it directed the Appellant to pay the compensation in the first instance with a right to recover the same from the Insured.
2. The following contentions are raised on behalf of the Appellant:-
 - (i) Although, there was no evidence with regard to the deceased's future prospects, the Claims Tribunal made an addition of 50% in the assumed income of the deceased Pramod Kumar @ ₹4358/- per month.

- (ii) The compensation of ₹75,000/- awarded towards loss of love and affection is on the higher side.
 - (iii) Since the cheque issued by the insured towards the premium was dishonoured, the Appellant had no liability to pay the compensation at all. The Claims Tribunal erred in making it liable to pay the compensation with a right to recover it from Respondents No.1 to 3.
3. On the other hand, learned counsel for the Respondents No.1 to 3 argues that PW-1's testimony with regard to deceased's salary of ₹7,000/- per month was not challenged in cross-examination. Thus, the loss of dependency without considering any future prospects would be more than the amount of compensation awarded by the Claims Tribunal towards the same, it would also take care of the excess amount awarded towards loss of love and affection. With regard to Appellant's liability to pay the compensation in the first instance, it is urged that no cogent evidence was led by the Appellant to prove that any intimation regarding dishonour of the cheque or cancellation of the policy was sent to the Insured or the registered owner. Thus, the Appellant was rightly made liable to pay the compensation.

QUANTUM:-

4. I have before me PW-1 Sarjeet Singh Thakur's testimony. In para 14 he testified that deceased Pramod Kumar was working as a driver with him. He was paying him a salary of ₹7,000/- per month. This part of PW-1's testimony was not challenged in cross-examination. Although, Respondent No.1 Sonali Jana could not produce any proof with regard to

deceased's income, yet in the absence of any challenge to PW-1's (the deceased's employer's) testimony regarding payment of salary to the deceased who was working as a driver with him, the Claims Tribunal ought to have accepted the deceased's income as ₹7,000/- per month. Even without an addition towards future prospects, the loss of dependency comes to ₹ 9,52,000/- ($₹7,000/- \times \frac{2}{3} \times 12 \times 17$).

5. If a notional sum of ₹25,000/- towards loss of love and affection, ₹10,000/- each towards loss of consortium, loss to estate and funeral expenses is added, the overall compensation comes to ₹10,07,000/- which is slightly higher than the compensation awarded by the Claims Tribunal. Thus, it cannot be said that the compensation awarded is excessive or exorbitant.

LIABILITY:-

6. Appellant's plea before the Claims Tribunal was that the cheque for ₹10,838/- having been dishonoured for insufficient funds and the Insured being informed about the same, the Appellant Insurance Company had no liability at all. On this aspect, the Claims Tribunal held as under:-

“39. R4W1 has stated that the company is not liable to pay any compensation as the offending vehicle was not insured on the date of accident. He stated that the cheque given by the insured had bounced on 25.04.09 due to insufficient funds as per the memo of the bank and the same was intimated to the insured vide letter dated 30.04.09. He proved the cheque return Ex.R4W1/2, the cheque Ex.R4W1/3 and intimation to the insured Ex.R4W1/4 about the dishonour of the cheque. He stated that they mention the mode of payment on the cover note before issuing the policy but admitted that the cheque number and date is not mentioned on the cover note Ex.PW1/78. He stated that the cover note was issued on 12.04.09 and generally they send the cheque to the bank for

encashment within 2-3 days. He stated that on Ex.R4W1/2, the cheque amount is mentioned as Rs.10,838/, presentation date as 24.04.09 and return date as 25.04.09 for the reasons “insufficient funds”. He stated that the policy is issued to the party even without realisation of the amount against the cheque. He stated that as per the document Ex.R4W1/1, the policy was signed at Mumbai on 28.04.09 in view of the cover note dated 12.04.09 however, the said policy was never sent to the party. He stated that they do not have any proof as to whether the party was informed/served about dishonour of the premium cheque or as to whether the copy was served on the Regional Transport Authority.

40. Perusal of testimony of R4W1 reveals that the policy was not sent to the insured although signed in view of the cover note to the party. The cheque towards premium was dishonoured on account of “insufficient funds”. Although R4W1 has stated that intimation was sent to the insured but he could not place any document to show of its acknowledgment by the insured or intimation to the Regional Transport Authority as to the non issuance of policy to the insured on account of dishonour of the cheque towards premium. However, respondent no.1 has been able to establish that the cheque towards premium of the insurance policy was dishonoured. No evidence has been led by the owner/insured to disprove this fact.”

7. The Claims Tribunal relied on *National Insurance Co. Ltd. v. Vasdev Kakreja & Ors. II (2010) ACC 148* and held that it was the liability of the Insurance Company to pay the compensation in the first instance with a right to recover the same from the Insured. I may say that *Vasdev Kakreja (Supra)* was not applicable to the facts of the present case as in the instant case there was no question of breach of the terms of policy either on account of driving the offending vehicle without licence or with a fake licence or with a licence which was not valid for the class of vehicle involved in the accident.

8. The Appellant's case was that since the cheque issued towards the premium of the Insurance Policy was dishonoured, the Appellant had no liability to pay. Although, Appellant sought to contend that an intimation of cancellation of policy and dishonour of the cheque was sent to the insured, yet no documentary evidence was produced with regard to posting of the letter to Respondent No.3. Moreover, in this case policy was issued by the Appellant Insurance Company, although the same was not sent to the Insured because of the dishonour of the cheque.
9. The Supreme Court in its latest report in *United India Insurance Company Limited v. Laxmamma & Ors.*, (2012) 5 SCC 234 relying on *Oriental Insurance Company Limited v. Inderjit Kaur*, (1998) 1 SCC 371, *New India Assurance Company Limited v. Rula*, (2000) 3 SCC 195, and *Deddappa & Ors. v. Branch Manager, National Insurance Company Limited*, (2008) (2) SCC 595 held as under:-

“26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised 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 authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured 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.”

10. Since in this case an intimation regarding cancellation of the policy was not sent before the accident, that is on 25.04.2009 as the letter Ex.R4W1/4 has been written on 30.04.2009, in the circumstances, the Insurance Company cannot avoid its liability to pay the compensation to the third party, but it shall have the right to recover the amount paid on the strength of *Laxmamma*. It is clarified that the Appellant shall have the right to recover the compensation paid not only from Respondents No.1 and 2 but also from Respondent No.3, who was the insured of the offending vehicle without having recourse to independent civil proceedings in execution of this very judgment.
11. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
12. The Appeal stands disposed of in above terms.
13. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 17, 2012

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