

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

Reserved on: 10th January, 2012

Pronounced on: 17th January, 2012

+ **MAC.APP. 460/2010**

NATIONAL INSURANCE COMPANY LTD..... Appellant

Through: Mr. Manoj Ranjan Sinha, Advocate.

versus

RESHMI & ORS Respondent

Through: Mr. Ashok Popli, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant National Insurance Company Limited impugns the judgment dated 03.04.2010 whereby a Claim Petition under Section 166 of the Motor Vehicles Act (the Act) preferred by the First Respondent (Ms. Reshmi), for having suffered injuries in an accident which took place on 17.07.2004, was allowed and she was granted a compensation of ₹ 87,178/-.
2. The defence raised by the Appellant National Insurance Company is that the policy had been cancelled due to which it was not liable to indemnify the insured, was rejected by the Tribunal relying on a judgment of the Himachal Pradesh High Court in *United India Insurance Company Limited v. Sandhya*

Devi & Ors., 2009 ACJ 1867, which in turn relied on *Daddappa & Ors. v. Branch Manager, National Insurance Company Limited, (2008) (2) SCC 595*; *National Insurance Company Limited v. Seema Malhotra & Ors., (2001) 3 SCC 151*; *New India Assurance Company Limited v. Rula, (2000) 3 SCC 195* and *Oriental Insurance Company Limited v. Inderjit Kaur, (1998) 1 SCC 371*.

3. Certain facts are not in dispute. The offending vehicle i.e. bus number DL-1PA-1453 was owned by Roshni Devi (Respondent No.3 herein) and the same was sold to Amit Gupta (Respondent No.4 herein) on 17.01.2004 and was transferred in his name on 17.06.2004. Respondent Amit Gupta also admitted that the vehicle was purchased by him on 17.06.2004. Although, Roshni Devi, the first owner and Amit Gupta, the subsequent owner (on the date of the accident) appeared during the inquiry before the Tribunal and filed their respective defenses but subsequently, they absented and were ordered by the Tribunal to be proceeded ex-parte by order dated 16.07.2008. The first and the subsequent owner i.e. Third and Fourth Respondent have preferred not to contest this Appeal also.
4. The question of negligence and the quantum of compensation has not been disputed by the Appellant Insurance Company. The learned counsel for the Appellant heavily relies on the case of *Daddappa & Ors. v. Branch Manager, National Insurance Company Limited, (2008) (2) SCC 595* to contend that once the

insurance policy was cancelled on account of dishonour of the cheque, the Insurance Company had no liability. It is urged that *Oriental Insurance Company Limited v. Inderjit Kaur, (1998) 1 SCC 371* was distinguished in *Daddappa & Ors.* where it was held that “*the dicta laid down therein clarifies that if on the date of accident the policy subsists, then only the third party would be entitled to avail the benefit thereof.*”

5. Before advertng to the facts of the case certain statutory provisions need to be noticed. Section 64VB of the Insurance Act 1938 enjoins on a insurer not to assume any risk until the premium payable is received by him. Section 64VB is extracted hereunder:-

“64VB. 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 insurer, he shall deposit with, or despatch 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 of insurance policies.

(6) The Authority may, from time to time, specify, by regulations made by it, the manner of receipt of premium by the insurer.”

6. In the case of *Inderjit Kaur* the Supreme Court referred to the provision of Section 149 (1) of the Motor Vehicles Act, and held that if an insurer issues policy of Insurance without receiving the premium then the insurer becomes liable to indemnify the third party in respect of the liability which that

policy covers and to satisfy the award of compensation in respect thereof; notwithstanding its entitlement to avoid or cancel the policy. Relevant portion of the report is extracted hereunder:-

“....Section 149 refers to the duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. Sub-section (1) thereof reads thus:-

“(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 thereunder, 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.

7. We, have therefore, this position. Despite the bar created by S.64-VB of the Insurance Act, the appellant, an authorized insurer, issued a policy of insurance to cover the bus without receiving the premium therefor. By reason of the provisions of Ss. 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."

7. In the case of *Seema Malhotra*, a contention was raised on behalf of the insured that the Insurance Company in the event of cheque been dishonoured after issuance of the policy was entitled to charge the premium only from the insured. The said contention was rejected on the ground that Insurance Company like any other person was in business to earn profit. It was held that because of statutory provision, the Insurance Companies are made liable to third parties due to the issuance of the policy. In para 8 it was held as under:-

"8..... The essence of the insurance business is the coverage of the risk by undertaking to indemnify the insured against loss or damage. They agree to pay the damages arising out of any accident by taking a chance that no accident might happen. Motivation of the insurance business is that the premium would turn to be the profit of the business in case no damage occurs. Such business of the insurance company can be carried on only with the

premium paid by the insured persons on the insurance policy. The only profit, if at all the insurance company makes, of the insurance business is the premium paid when no accident or damage occurs. But to ask the insurance company to bear the entire loss of damages of somebody else without the company receiving a pie towards premium is contrary to the principles of equity, though the insurance companies are made liable to third parties on account of statutory compulsions due to the initial agreement, entered between the insured and the company concerned.”

8. In the case of *Daddappa & Ors.* the Supreme Court referred with approval the judgments of *Inderjit Kaur*, *Seema Malhotra* and *Rula* and held that if on the date of the accident the policy subsists only then the third party would be entitled to avail the benefit thereof. It was observed that if the contract of Insurance has been cancelled and all concerned (meaning thereby, the insured as also the RTO under Section 147 (4) of the Act) have been intimated about the same, the Insurance Company would not be liable to satisfy the claim of the third party. In para 26 of the report, the Supreme Court observed that although the Insurance Company was not liable to the third party in that case, as all concerned had been informed of the cancellation of the policy, but in exercise of the extraordinary jurisdiction provided under Article 142 of the Constitution of India, the Insurance Company was directed to pay the amount of claim to the Claimants and to recover the same from the owner of the vehicle. The relevant Paras of the report in *Daddappa & Ors* are

extracted hereunder:-

“9. Before embarking on the said question we may notice the admitted facts. The second respondent who was driving the vehicle was also the owner thereof. The insurance policy was to remain valid for the period 17.10.1997 to 16.10.1998. Respondent 3 issued a cheque on 15.10.1997. The said cheque was presented for encashment before Syndicate Bank. The Bank by its letter dated 21.10.1997 issued a 'return memo' disclosing dishonour of the cheque with the remarks "fund insufficient". The first Respondent thereupon cancelled the policy of insurance. The said information was communicated to Respondent 2. An intimation thereabout was also given to the RTO concerned.

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15. The question came up for consideration before this Court in Inderjit Kaur (supra), wherein it was opined that a policy of insurance which is issued in public interest would prevail over the interest of the insurance company. In that case a bus met with an accident. The policy of insurance was issued on 30.11.1989. A letter stating that the cheque had been dishonoured was sent by the Insurance Company to the insurer on 23.1.1990. The premium was paid in cash on 2.5.1990. The accident took place 19.4.1990. Despite noticing Section 64-VB of the 1938 Act, but having regard to the underlying public policy behind the statutory scheme in respect of insurance as evidenced by Sections 147 and Section 149 of the Act and in particular having regard to the fact that policy of insurance to cover the bus without receiving the premium had already been issued, this Court held that the Insurance Company was liable to

indemnify the insured.

16. We may, however, notice that in terms of Sub-section (5) of Section 147 and Sub-section (1) of Section 149 of the Act, the Insurance Company became liable to satisfy awards of compensation in respect thereof, notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued for payment of premium thereon had not been honoured.

17. The said question, however, was left open in Inderjit Kaur (supra). The said decision proceeded on the basis that it was the Insurance Company which was responsible for placing itself in the said predicament as it had issued a policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64-VB of the 1938 Act. The public interest in a situation of that nature and applying the principle of estoppel, this Court held, would prevail over the interest of the Insurance Company.

18. The ratio of the said decision was, however, noticed by this Court in New India Assurance Co. Ltd. v. Rula (supra). It was held that ordinarily a liability under the contract of insurance would arise only on payment of premium, if such payment was made a condition precedent for taking effect of the insurance policy but such a condition which is intended for the benefit of the insurer can be waived by it. It was opined:

“13....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 party.”

The dicta laid down therein clarifies that if on the date of accident the policy subsists, then only the third party would be entitled to avail the benefit thereof.

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24. We are not oblivious of the distinction between the statutory liability of the Insurance Company vis--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.

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26. However, as the appellant hails from the lowest strata of society, we are of the opinion that in a case of this nature, we should, in exercise of our extra-ordinary jurisdiction under Article 142 of the Constitution of India, direct the Respondent 1 to pay the amount of claim to the appellants herein and recover the same from the owner of the vehicle viz., Respondent 2, particularly in view of the fact that no appeal was preferred by him. We direct accordingly”.

9. Turning to the facts of this case, in order to prove the

cancellation of the policy, the Insurance Company examined R4W1 Rakesh Talwar. He deposed that the insured Roshni Devi (third Respondent) issued a cheque number 625581, dated 24.08.2003 drawn on Syndicate Bank which on presentation was dishonoured on account of insufficient funds. The witness proved the copy of the cheque Ex.R4W1/1, copy of the Bank account statement Ex.R4W1/2 and copy of the return memo as Mark A. The witness deposed that they had sent an intimation Ex.R4W1/3 to Roshni Devi on 17.09.2003. The witness proved postal receipt Ex.R4W1/4. He deposed that the policy was thereafter cancelled by an endorsement Ex.R4W1/5. The witness testified that a notice dated 7.06.2007 under Order 12 Rule 8 CPC was sent to Roshni Devi by registered post to produce these documents. Copy of the notice and the postal receipt were also proved. R4W1's testimony regarding the cancellation of the policy was not challenged by any cross-examination. In fact, as stated earlier, the Insurance Company was proceeded ex-parte on that date. It is important to note that although the insured was informed about the cancellation of the policy on account of dishonour of the cheque, yet intimation under Section 147 (4) of the Act was not sent to the RTO. That having not been done, the Appellant is liable to satisfy the award, as far as the First Respondent (claimant) is concerned. It shall, however, have the right of recovery against the insured i.e. the third Respondent Roshni Devi.

10. I am conscious of the fact that Section 168 makes every owner of the vehicle liable for payment of compensation. The term 'owner' as per Section 2(30) means a person in whose name a motor vehicle stands registered, etc. In this case, the Fourth Respondent Amit Gupta was the registered owner of the vehicle on the date of the accident i.e. 17.07.2004. The insurance policy in question was issued on 29.08.2003 and was valid upto 28.08.2004. The insurance policy was obtained by Roshni Devi. The cheque issued by her was dishonoured on presentation and was returned by the Syndicate Bank by the return memo dated 05.09.2003. The contract of the Insurance was between the Appellant National Insurance Company Limited and Smt. Roshni Devi. Although, the registered owner always remains liable to pay the compensation along with the rightful owner, since the Insurance Company has been made liable to pay the amount on the basis of the contract between it and the first owner, who being liable to keep the vehicle insured had also obtained the Insurance policy for which the cheque was dishonoured, it is her liability to reimburse the amount of compensation paid by the Appellant Insurance Company.
11. The Appeal is allowed in above terms. No costs.
12. Pending application also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 17, 2012

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