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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 18th July, 2012

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MAC. APP. No.594/2010

DHARAMVIR SINGH

..... Appellant

Through: Mr. Kundan Kumar Lal,
Advocate

Versus

NEW INDIA INSURANCE CO. LTD. Respondent

Through: Mr. Kanwal Chaudhary,
Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Dharamvir Singh impugns a judgment dated 07.10.2009 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby while awarding a compensation of ₹6,81,000/- in favour of the Respondents No.3 to 6 and making the New India Insurance Co. Ltd. liable to pay the compensation granted recovery rights against the Appellant.
2. It is urged by the learned counsel for the Appellant that in this case the insurance policy was issued by the Respondent New India Insurance Co. Ltd; the Insurance Company failed to prove that a notice of dishonour of the cheque paid towards premium was given to the Appellant; the Appellant never knew of the

dishonour of the cheque and thus the Appellant could not have been saddled with the liability to reimburse the amount of compensation paid by the Insurance Company to the Respondents No.3 to 6.

3. A perusal of the Trial Court record shows that the Appellant entered the witness box as R2W1 and testified that he got his bus No.DBP-1862 insured and the Insurance policy was valid for the period 12.10.98 to 11.10.99. He deposed that he was never issued any notice regarding cancellation of the insurance policy or about the dishonour of the cheque given at the time of insurance to the agent. In cross-examination, he denied the suggestion that any such notice cancelling the policy was received by him.
4. The Respondent Insurance Company, on the other hand, filed an affidavit Ex.R3W1/A in order to prove that a notice was issued to the Appellant as well as the RTO about the cancellation of the insurance policy. In cross-examination on behalf of the Appellant, the witness (R3W1) admitted that on the policy which had been brought by him there was no mention of dishonour of the cheque or that the policy was cancelled. He stated that the insured (i.e. the Appellant) was informed of the cancellation of the policy and the dishonour of the cheque through courier by document Ex.R3W1/6. A perusal of the document Ex.R3W1/6 reveals that the name of the insured has been mentioned as Veer Singh as against Dharamvir Singh.

The document does not bear the Appellant's address. The document does not reveal whether it was ever sent or the mode through which it was dispatched to the Appellant. It may be noticed that according to the Insurance Company, the intimation regarding dishonour of the cheque was sent on 16.10.2007 which as stated above the Insurance Company has utterly failed to prove; the accident in question took place on 09.06.1999 i.e. after about eight months of alleged cancellation of the policy. Had the Appellant received intimation of the alleged cancellation or dishonour of the cheque, he might have revived the policy or might have obtained another policy either from the First Respondent or from any other Insurance Company. Section 64VB of the Insurance Act, 1938 enjoins on an 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.”

5. In the case of *Oriental Insurance Company Limited v. Inderjit Kaur*, (1998) 1 SCC 371, 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."

6. In *Daddappa & Ors. v. Branch Manager, National Insurance Company Limited*, (2008) (2) SCC 595, the Supreme Court referred with approval the judgment of *Inderjit Kaur (supra)* and *New India Assurance Company Limited v. Rula*, (2000) 3 SCC 195 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. Para 24 of the report is extracted hereunder:

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

7. In the instant case, as stated earlier, the Insurance Company has

failed to prove that any intimation about the dishonour of the cheque or cancellation of the policy was sent either to the Appellant or to the RTO. Rather, the accident took place after a period of eight months of the alleged cancellation. The Appellant was prejudiced as he was deprived of an opportunity to have the insurance policy revived or get a fresh insurance. The Respondent Insurance Company was not entitled to avoid the liability. The Claims Tribunal erred in granting recovery rights to the Insurance Company against the Appellant. The impugned judgment so far as it grants recovery rights against the Appellant is hereby set aside.

8. The Appeal is allowed in above terms.
9. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.
10. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 18, 2012

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