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

% *Judgment delivered on: 27th November, 2013*

+ **MAC.APP. 495/2010**

USHA AGGARWAL

..... Appellant

Represented by: Mr. Navneet Goyal, Adv.

Versus

PARMOD KUMAR GUPTA & ORS.

..... Respondents

Represented by: Ms. Suman Bagga, Adv.
For R-3.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal has been preferred against the impugned award dated 29.05.2010, whereby while granting compensation of Rs. 21,90,000/- with interest @ 7 % from the date of filing of the petition till realization., the Ld. Tribunal has exonerated respondent No.3/Insurance Company and directed the respondents No. 1 and 2, i.e., driver and owner of the offending vehicle to pay the compensation.

2. Counsel appearing on behalf of the appellant submitted that the accident took place on 27.04.2001; the cheque for 'cover note' was issued by the respondent No.2 Raju Gupta on 15.03.2001. Accordingly, the

respondent No.3 issued cover note in favour of the respondent No.2. Thereafter, on the cheque being dishonoured, the respondent No. 3/Insurance Company sent notice dated 28.03.2001 by cancelling the said cover note.

3. Ld. Counsel further submitted that even the cover note/policy was cancelled, despite, first liability is on the Insurance Company and thereafter the same amount can be recovered from the insured.

4. Vide the instant appeal, the appellant is seeking direction against the respondent No. 3 to pay the compensation amount and thereafter recover the same from the respondent no.2/insured.

5. To strengthen his arguments learned counsel has relied upon the case of ***Oriental Insurance Co. Ltd. Vs. Sivankutty and others 2006 ACJ 106*** decided by Full Bench of the Kerala High Court wherein the Court has held as under:

“4. The petitioner was passenger in stage carriage bus "Sheeba" bearing Registration No. KLB 9666 plying along Ranni-Erumeli route on 23.12.1991. At Ranni junction, the offending lorry bearing Regn.No. KRO 5405 which was coming in the opposite direction hit the said bus resulting in injuries and fracture being caused to the petitioner. The first respondent was the owner and the second respondent was the driver of the said lorry. The third respondent Insurance Company had issued Ext.B8 policy of insurance in relation to the said lorry on 4.11.1991 for the period from 5.11.1991 to 4.11.1992. But consequent on dishonour of Ext.B1 cheque issued by the first respondent towards payment of premium, the third respondent vide Ext.B3 letter dt.19.11.1991 informed the first respondent of the

dishonour of the cheque and thereafter by Ext.B6 notice dt.29.11.1991 issued to the first respondent, cancelled the policy under intimation to the R.T.O, vide Ext.B4 of the same date. It is thereafter on 23.12.1991 that the accident involved in this case has taken place. Additional respondents 4 to 6 were the owner, driver and insurer of the bus involved in the accident and they remained ex parte.

*5. The Tribunal found on evidence that the accident has occurred solely on account of the negligence of the second respondent driver of the lorry bearing Regn.No. KRO 5405 owned by the second respondent and in relation to which the third respondent Insurance Company had issued Ext.B8 policy of insurance covering period from 5.11.1991 to 4.11.1992. The compensation payable to the petitioner the injured in the accident was assessed at Rs. 2,22,000/-. The second respondent driver was held primarily liable in damages for his negligence, the first respondent owner was held vicariously liable and the third respondent Insurance Company was found liable to pay the compensation awarded despite cancellation by them of Ext.B8 policy of insurance relying on the decisions of the Apex Court in **Oriental Insurance Co. Ltd. v.. Inderjit Kaur and Ors.** (1998 (1) KLT23 : AIR 1998 SC 588) and in **New India Assurance Co. Ltd. v.. Rula and Ors.**, MANU/SC/0161/2000 : [2000]2SCR148 and of a Division Bench of this Court in **New India Assurance Co. Ltd. v.. Shamsed** (2000 (2) KLT 67) but with right to recover the amount so paid in satisfaction of the award from the first respondent owner of the lorry by reason of provisions in Sections 147(5) and 149(4) of the Motor Vehicles Act, 1988.*

20. Neither from the three member decision of the Apex Court in Inderjit Kaur's case (1998 (1) KLT (SC) 23 : AIR 1998 SC 588) nor from the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act,

1988 do we get any support to hold the view that the liability to pay compensation for injuries sustained to third parties ceases to exist after the cancellation of the policy. The situation is not akin to that of an owner of a vehicle not having taken any insurance at all for the vehicle as on the date of the accident, as is observed by the Division Bench of this Court in New India Assurance Co. Ltd. v. Raghu (2001 (3) KLT 515). We therefore hold that the decision of the Division Bench of this Court in New India Assurance Co. Ltd. v. Raghu (2001 (3) KLT 515) does not lay down the correct law. The position is that the liability of the Insurance Company in damages for third party risks continues for the entire period covered by the policy in spite of the cheque issued towards payment of premium was dishonoured and consequently policy was cancelled by the Insurance Company. The remedy of the Insurance Company lies against the "insured" to have the amount paid by them by way of compensation for third party risks to be got reimbursed."

6. He also relied upon the case of ***Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and others 1998 ACJ 123*** wherein the Apex Court has held as under:-

" 3. For the purposes of the appeal, therefore, very few facts are relevant. A bus met with an accident. Its policy of insurance was issued by the appellant on 30th November, 1989. The premium for the policy was paid by cheque. The cheque was dishonoured. A letter stating that it had been dishonoured was sent by the appellant to the insured on 23rd January, 1990. The letter claimed that, as the cheque had not been encashed, the premium on the policy had not been received and that, therefore, the appellant was not at risk. The premium was paid in cash on 2nd May, 1990. In the meantime, on 19th April, 1990, the accident took place; the bus collided with a truck, whose driver died.

The truck driver's widow and minor sons tiled the claim petition. The appellant denied the claim asserting that under the terms of Section 64VB of the Insurance Act, 1938, no risk was assumed by an insurer unless the premium thereon had been received in advance. The Motor Accident Claims Tribunal rejected the appellant's contention and awarded the claimants compensation in the sum of Rs. 96,000 with interest at the rate of 12 per cent per annum from the date of the petition, to be paid by the insured and the appellant jointly and severally. The appeal filed by the appellant before the High Court of Punjab & Haryana was summarily dismissed, and it is that order which is now under challenge.

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

9. The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured.

11. It must also be noted that it was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions

of Section 64VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant.”

7. Learned counsel submitted that keeping in view the facts of the present case and the settled law as discussed above, the present appeal may be allowed and the respondent No.3/Insurance Company may be directed to pay the amount to the appellants.

8. On the other hand, learned counsel appearing on behalf of respondent No.3/Insurance Company submitted that the respondent No.2 Raju Gupta, i.e., owner of the offending vehicle, issued a cheque which was dishonoured and accordingly he was informed by the Insurance Company by the notice dated 28.03.2013 well before the accident. The cheque issued by the respondent No.2 has been proved as Ex.R3W1/A dated 15.03.2001 which was returned unpaid vide Ex. R3W1/B and C. The Insurance Company, thereafter, issued a notice to the owner Raju Gupta on 28.03.2001, copy of the same has been proved as Ex. R 3W1/D.

9. Ld. Counsel further submitted that the accident took place on 27.04.2001 which is a date subsequent to the notice issued by Insurance Company to the owner informing about dishonour of the cheque. By the aforesaid notice, it was further informed to the insured that his cheque issued against the cover note was returned unpaid and in view of the same, cover note stands cancelled.

10. She further submitted that in the written statement filed by the respondents No. 1 and 2, it is nowhere stated that the vehicle was insured on the date of the accident. Moreover, R3W1 Rajesh Kumar, witness of the

Insurance Company has not been cross-examined by the counsel for respondents No. 1 and 2 despite opportunity being offered for the same.

11. She submitted that keeping in view the facts and circumstances of the case, the Ld. Tribunal has rightly exonerated the Insurance Company from any liability and the respondent No. 2, i.e., the owner of the offending vehicle, was directed to pay the award amount.

12. To strengthen her arguments, Ld. Counsel relies upon the case of ***United India Insurance Company Limited Vs. Laxmamma and others*** (2012) 5 SCC 234 wherein the Apex Court has held as under:-

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

13. Ld. Counsel further submitted that on the date of accident the insurance policy was not in existence. Cancellation of the same was conveyed to the respondent No. 2 well before the accident. Therefore, there is no merit in the instant appeal; accordingly, same may be dismissed.

14. I have heard counsel for the parties.

15. Admittedly, the cheque was issued by the respondent No.2 Raju Gupta, i.e., the owner of the offending vehicle on 15.03.2001 for issuance of cover note. Accordingly, the respondent No. 3 issued cover note in favour of the respondent No. 2. Thereafter, on the cheque being dishonoured, the respondent No. 3 Insurance Company sent notice dated 28.03.2013 by cancelling the said cover note.

16. The question before this Court for consideration is whether the cover note once issued and thereafter on the cheque being dishonoured, the said cover note continued in force as the third party risk is concerned.

17. The similar issue came before the High Court of Kerela in the case of *Sivankutty and others (Supra)* wherein the Court held that the liability of the Insurance Company in damages for third party risks continues for the entire period covered by the policy in spite of the cheque issued towards payment of premium was dishonoured and consequently policy was cancelled by the Insurance Company. The remedy of the Insurance Company lies against the "insured" to have the amount paid by them by way of compensation for third party risks to be got reimbursed.

18. Moreover, in the case of *Inderjit Kaur and others (Supra)* the Apex Court held that despite the bar created by Section 64VB of the Insurance

Act, the appellant, an authorized insurer, issued a policy of insurance to cover the bus without receiving the premium. By reason of the provisions of Section 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 to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

19. In view of the above, the respondent No. 3 Insurance Company cannot be absolved of its obligation to third parties under the policy because it did not receive the premium. It has remedies in this behalf lay against the insured. It was the Insurance Company itself who was responsible for its predicament. It had issued the policy of insurance upon receipt of a cheque towards the premium in contravention of the provisions of Section 64 VB of the Insurance Act. A policy of insurance being a public interest concept prevails over the interests of the Insurance Company.

20. The Ld. Tribunal has wrongly exonerated Respondent No.3 Insurance Company from the liability and directed respondents no. 1 and 2 to pay the compensation. Ld. Tribunal has not considered the settled law regarding the statutory liability of the insurance company which is also envisaged as per the provisions of Motor Vehicles Act, 1988.

21. In view of the above discussion and the settled law, the Insurance Company is directed to pay the compensation amount before the Id. Tribunal within five weeks from the date of receipt of this judgment, in terms of the

award dated 29.05.2010 with recovery rights against the respondent no.2, i.e., the owner of the offending vehicle. Failing which, the appellant shall be entitled for 12% interest on delayed payment.

22. Accordingly, the appeal is allowed.

SURESH KAIT, J

NOVEMBER 27, 2013

RS/jg