



FAO-4883-2005 (O&M)

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO-4883-2005 (O&M)
Date of Decision : 21.10.2024**

ORIENTAL INSURANCE CO. LTD. APPELLANT

VERSUS

DARSHAN KAUR AND ORS RESPONDENTS

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. R.P. Daria, Advocate for the appellant-Insurance Company.

Mr.K.K. Garg, Advocate
for the respondents No.1 to 4.

Mr.Ravinder Arora, Advocate with
Mr. Vipul, Advocate for respondent Nos.7 and 8.

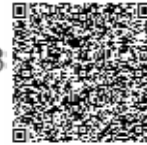
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SUDEEPTI SHARMA, J.

1. The present appeal has been preferred by the Insurance Company against the award passed by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') on 08.08.2005 under Section 166 of the Motor Vehicles Act, 1988, whereby, the claimants were awarded a compensation of Rs.3,14,200/- along with interest @ 9% per annum.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 30.07.2001 Bhagwan Singh alongwith his brother Pal Singh boarded a bus No. HP-25-0792 for going to Nogali (near Dharampur), from Chandigarh. He was sitting near window of the driver side. When the bus reached near Chow Blind curve Bathol Dharampur, then a truck bearing No.HP-14-3373 came from the side of Dharampur and in the process of crossing each other, the driver of both the vehicles failed to maintain a distance in between and collided with each other. As a result of the impact, Bhagwan Singh



suffered head injuries as the window panes of the bus were broken and hit against his head. Bhagwan Singh died on the spot due to grievous injuries suffered by him.

3. Upon notice of the claim petition, respondents appeared and denied the factum of compensation.

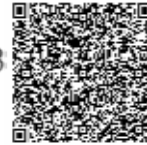
4. From the pleading of the parties, the Tribunal framed the following issues:-

- “1. Whether Bhagwan Singh died in a road accident which took place on 30.7.01 at about 6.45 a.m. on national highway no.2 near Chow Blind Curve Bathol, Dharampur on account of rash & negligent driving of bus NO. HP-25-0792 and truck No. HP-14-3373 by their respective drivers i.e. respondents no.1 & 5, owned by respondents no.4 and 2 respectively? OPP*
- 2. If issue no.1 is proved whether claimants are entitled to any amount as compensation, if so, to what amount and from whom? OPP*
- 3. Whether respondent no.1 was not holding a valid driving licence at the time of accident if so, its effect? OPR-3*
- 4. Relief.”*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.3,14,200/- alongwith interest @ 9% per annum. Hence the present appeal.

SUBMISSIONS OF THE COUNSELS

6. The learned counsel for appellant-Insurance Company contends that the date of insurance is 21.09.2000, which was cancelled because of dishonor of



the cheque on 24.11.2000 and the date of accident is 30.07.2001. He contends that once there is no insurance and it was cancelled, the learned Tribunal has erred in making the oriental insurance company liable to pay jointly and severally the amount of compensation. He relies upon the judgment of the Hon'ble Supreme Court in **Deddapa and others versus The Branch Manager, National Insurance Co. Ltd., 2008 AIR Supreme Court 767.**

7. Per contra, learned for the respondents No.1 to 4-claimant argues that the award passed by the learned Tribunal is liable to be enhanced.

8. Per contra, learned for the respondents No.7 and 8 argues that the learned Tribunal vide award dated 08.08.2005 has rightly held that the insurance company is liable to pay the amount of compensation awarded to the claimants and the present appeal is liable to be dismissed.

9. I have heard learned counsel for the parties and perused the whole record of this case.

10. A perusal of the award shows that the learned Tribunal after taking into consideration arguments of both the parties held that insurance company is also liable to pay the amount of compensation awarded to the claimants. The relevant extract of the award is reproduced as under:-

“22. The moot point in this particular case is regarding liability of respondent no.3 namely Oriental Insurance Company. Oriental Insurance Company insured the truck No. HP-14-3373 on 21.9.2k as per insurance cover. The counsel for the insurance company has taken a firm stand that the insurance company is not liable because the cheque of premium was dishonoured and the insurance policy was



cancelled vide letter dt. 24.11.2k (Ex-R-5) and its intimation was duly sent to the owner of vehicle Vikram Singh vide registered cover receipt of which is Ex. R-7. In this context he relied upon an authority titled as New India Assurance Company Ltd Vs. Raghu and Ors 2003 (1) Accidents Compensation Judicial Reports 282. In this particular case because of dishonouring of cheque of premium of policy, the policy was cancelled and accordingly the insurance company was absolved of its liability to pay the compensation.

23. Every case has got its own distinct facts. The facts of the present case are quite different from the authority relied upon by the counsel for the insurance company. In the present case though the policy was cancelled and intimation was sent to the owner of the vehicle but no intimation was sent to the Registering Authority as required under the Motor Vehicles Act, 1988. I am of the considered view that in this particular case section 147 (clause 4) and Section 149 of the Motor Vehicles Act 1988 applies. Section 147 (clause 4) runs as follows:-

"Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has



been registered or to such other authority as the State Government may prescribe."

Similarly Section 149 of the Motor Vehicles Act, 1988 runs as follows:-

"(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 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 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."

24. *To decide this point reliance is further placed on an authority titled as Oriental Insurance Company Ltd Vs. Inderjit Kaur and*



others, AIR, 1988, SC, 588 wherein it has categorically been held that where insurer has issued the policy to cover bus without receiving premium, he becomes liable to indemnify the third party in respect of its liability which policy covers and to satisfy awards of compensation. Provisions of section 64-VB of the Insurance Act does not absolve the insurer of its liability. Similarly reliance is further placed on an authority titled as United India. Insurance Co, Ltd Vs. Mahendra Singh and others, 2005 (1) Accidents Compensation Judicial Reports 205 wherein it has been clearly held that merely because the cheque was dishonoured, the liability of the insurance company to the claim of third party had not come to an end. However the insurance company could recover the amount from the insured. Reliance is further placed on an authority titled as Oriental Insurance Company Limited Vs. Pinjary Hussainamma, 2002 ACJ, 597 wherein the insurance policy was cancelled prior to the date of accident but the cancellation was not communicated to the Registering Authority as required under Section 147 (4) of the Motor Vehicles Act, 1988. It was held that the insurance company was not exempted from the liability to the third party though it could proceed against the owner.

25. *In view of the detailed discussion made above it is manifest that in the present case after the cancellation of the policy by the insurance company no intimation/communication was sent to the Registering Authority as is required under Section 147 (4) of the Motor Vehicle Act. Moreover in view of section 149 of the Motor*



Vehicles Act 1988 and Section 64-VB of the Insurance Act, the liability of the insurance company towards the third party does not come to an end. Accordingly it is held that Oriental Insurance Company-respondent no.3 is also liable to pay the compensation to the claimants along with other respondents. However the insurance company lateron may sue the original owner to satisfy their claim against him. The liability of all the five respondents in this case shall be joint and several.”

11. A perusal of the above reveals that the cheque of premium was dishonoured and insurance policy was cancelled vide letter dated 24.11.2000 (Ex.P-5) and its intimation was duly sent to Vikram Singh, the owner of the vehicle vide registered cover receipt, which is Ex.R-7. It is a settled proposition of law as held by the Hon’ble Supreme Court in **Deddapa and others versus The Branch Manager, National Insurance Co. Ltd** (supra) that if the contract of insurance has been cancelled and all concerned have been intimated thereabout, insurance company would not be liable to pay the compensation. The relevant extract of the judgment are reproduced as under:-

“22. A contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedents for a valid contract. A contract furthermore must be for consideration.

23. In today's world payment made by cheque is ordinarily accepted as valid tender. Section 64VB of the 1938 Act also provides for such a scheme.



24. Payment by cheque, however, is subject to its encashment. In **Damadilal & Ors. v. Parashram & Ors.** [(1976) 4 SCC 855], this Court observed :-

"On the ground of default, it is not disputed that the defendants tendered the amount in arrears by cheque within the prescribed time. The question is whether this was a lawful tender. It is well-established that a cheque sent in payment of a debt on the request of the creditor, unless dishonoured, operates as valid discharge of the debt and, if the cheque was sent by post and was met on presentation, the date of payment is the date when the cheque was posted..."

25. XXXX XXXXX XXXXX

26. 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.”



FAO-4883-2005 (O&M)

-9-

12. On the touchstone of hereinabove discussed findings and judicial precedent, the award dated 08.08.2005 passed by learned Tribunal, Chandigarh stands vitiated by a complete absence of judicial application of mind.
13. In view of the above, the present appeal is partly allowed to the extent that insurance company shall not be liable to pay the compensation and respondents No.7 is held liable to pay the compensation.
14. Pending applications, if any, also stand disposed of.

October 21, 2024
A.Kaundal

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No