IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1812 OF 2013

United India Insurance Company Ltd.,
Through its Divisional Manager,
Osmanpura, Aurangabad. ...Appellant

versus

1. Yadavrao S/o. Gyanbarao Magar,
Age: 50 years, Occu : Labour,
R/o. Shindgi, Taluka Kalamnuri,
District Hingoli.

2. Gokarnabai Yadavrao Magar,
Age: 45 years, Occu : Household,
R/o. As above.

3. Keshav Ramrao Shinde,
Age: Major, Occu : Business,
R/o. Shindgi, Taluka Kalamnuri,
District Hingoli. ...Respondents

.....

Mr. S. G. Chapalgaonkar, Advocate for appellant.

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CORAM : N.W. SAMBRE, J.

DATE : 27TH MARCH, 2015

ORAL ORDER :

This is an appeal by the Insurance Company under the provisions of Section 173 of the Motor Vehicles Act, 1988.

2. Learned Motor Accident Claims Tribunal, Hingoli in Motor Accident Claim petition No. 04 of 2008 has ordered the present appellant to pay compensation of Rs.2,66,000/- with proportionate costs alongwith interest @8.5% p.a. from the date of filing of the petition to the claimants.

3. It is claim of the appellant Insurance Company that it was impleaded as respondent No.2 to the said claim petition. According to him, Motor Accident Claim Petition under Section 163-A of the Motor Vehicles Act, 1988 was moved claiming compensation of Rs.4,00,000/- with interest @ 15% p.a. by the claimants-respondents, as a consequence of the accident dated 12/07/2007 causing death of one Vilas Magar being hit by Tractor bearing Registration No. MH-38-B-1053.

4. The appellant claimed that they have filed written statement to the claim petition vide Exhibit-16 and have denied their liability. Amongst other defence which were raised were ; (a) the driver of the vehicle insured was not holding effective licence, as such breached policy conditions, (b) tractor bearing MH-38-B-1053 was not insured with the appellant on the date of accident having regard to the provisions of Section 64-VB of the Insurance Act,1938 and (c) the Insurance Company has cancelled the policy because of non payment of premium as cheque issued for payment of premium was got bounced.

5. In support of the defence raised by the appellant, they have examined RW-1 Vinayak Devidasrao Ashturkar, Branch Manager, United India Insurance Company at Exhibit-36 so as to prove the policy period of insurance i.e. from 13/07/2006 to 12/07/2007, original cheque towards premium, which was dishonoured at Exhibit-36/2, memo of bank intimating dishonor of cheque for insufficient funds at Exhibit-37, office copy of the notice to respondent No.1 by insurer at Exhibit-38, statement of banker at

Exhibit-39.

6. Having regard to the pleadings, the tribunal framed following issues at Exhibit-18 and same are answered accordingly.

1-Whether the Petitioners prove that deceased Vilas Yadavrao Magar died in the vehicular accident on 12-07-2007 due to involvement of the vehicle?	.. Yes.
2-Whether the Petitioners prove that the accident occurred due to rash and negligent act/driving of the driver of Tractor No. MH-38/B-1053?	.. Yes.
3-Whether Respondent No.2 Insurance Company proves that the driver of offending vehicle was not holding valid and effective driving licence at the relevant time or there is breach of policy condition?	.. No.
4-What order and award?	As per final order.

7. The tribunal held that deceased Vilas Magar died in an accident on 12/07/2007 due to involvement of tractor vehicle bearing Registration No. MH-38B-1053 in the accident and the accident has occurred due to rash and negligent driving of the said tractor vehicle. The tribunal further observed that the driver of offending vehicle was not holding valid licence, was not proved by present appellant though burden

was on it.

8. Though the issue as regards liability of the appellant insurance company to pay premium was not raised and decided before the tribunal, however, same is sought to be canvassed in the present appeal by Mr. Chapalgaonkar by his skillful and articulate arguments. Mr. Chapalgaonkar would urge that in view of dishonor of cheque, which was given towards premium by the vehicle owner, the policy automatically comes to an end, particularly having regard to the provisions of Section 64-VB of the Insurance Act. In addition to above, he would further urge that the liability of Insurance Company on the date of accident should have been held non executable because of dishonor of cheque of premium and further added that even if it is presumed that on the date of dishonor of cheque or on the date of accident, the vehicle was insured, however for dishonour of cheque of premium, that is to say, non payment of premium amount, the insurance company has every authority to recover the amount paid to the claimants towards the compensation from vehicle owner. In support of his contention, he has placed reliance upon the judgment of the Apex Court in the matter of ***United India Insurance Company Ltd. vs. Laxmamma*** and others reported in ***AIR 2012 SC 2817***.

9. The respondents though served remained absent. However, it is required to be noted that this Court has already passed an order dated 24/01/2014 that the matter will be heard and disposed of finally at admission stage .

10. Having regard to the above referred submissions, this Court proceeded to evaluate the pleadings, evidence of the parties brought before the tribunal and appreciation thereof. The point that needs to be determined in the present appeal is, as to whether the appellant herein is entitled for the recovery of the amount of compensation, as ordered by the Motor Accident Claims Tribunal from the vehicle owner for want of payment of premium?

11. So as to decide and determine the above referred issue, what is required to be looked into is, how the said burden has been discharged by non-applicant No. 2 in the claim petition i.e. present appellant.

12. No doubt, it is true that the appellant herein has examined one Mr. Vinayak Ashturkar, Branch Manager of the appellant Insurance Company at Exhibit-36 so as to substantiate and prove its case that the policy was cancelled in accordance with the relevant statute. The said witness was examined so as to establish that the cheque of premium was dishonoured, there was appropriate intimation to the owner as regards cancelling insurance policy because of dishonor of cheque of premium.

13. This Court has gone through the evidence of the said witness Vinayak Ashturkar, who was examined at Exhibit-36. The said witness has stated that for insuring tractor of opponent No.1 through Agent and Development Officer, Hingoli, a cover note was prepared. Since the vehicle was not registered, cover note Exhibit-28 was issued, against

which the Dealer of the vehicle forwarded cheque of Rs.7234/-, which was not cleared for want of sufficient funds in the accounts of issuer of the cheque.

14. He has further stated that the said cheque and the memo of return of cheque issued by the bank is produced on record at Exhibit-37 and claimed that the letter was sent through Registered Post A.D. to the vehicle owner cancelling the policy. The said letter was given Exhibit-38. In the cross examination, the said witness has stated that cover note contains endorsement as to whether same was issued against premium paid by cheque or by cash. He has further stated in his cross examination that neither any such endorsement that premium was received through cheque or cash, nor there is an endorsement on the cover note that policy shall stand cancelled, in case of dishonour of cheque. He has also admitted that in case of cancellation of policy, intimation is required to be given to the Regional Transport Office and policy holder and in the present case, no such intimation was given to R.T.O. office. He has also admitted that he has not produced any document demonstrating intimation of cancellation of the policy to the insurer. Rather he has admitted that there is no such acknowledgment in their office. He has also admitted that cheque in question, which is referred to in his evidence, was not issued by the insurer.

15. If we analyze the evidence of the said witness so as to consider the contentions, it is required to be noted that the cheque for

premium of insurance policy was not issued by the insurer and there is clear admission to that effect by the witness of the appellant.

16. Once it is admitted that the cheque for premium amount was not issued by insurer, this Court is required to look into as to whether the cover note of insurance was issued against the alleged cheque or not. The said witness in clear terms has admitted that on cover note neither there is any such endorsement, as cover note is issued against the said cheque, which was dishonoured nor there is any endorsement that in case of dishonor of cheque, insurance will stand cancelled.

17. The said witness rather has gone on record to admit that about cancellation of policy of insurer, neither intimation was given to the R.T.O. office nor he has produced on record any document or no such document is in existence even in their office about such intimation to the insured.

18. Once it is established that the policy was issued not against the cheque, which was dishonoured, the claim of the appellant, particularly having regard to analyzed the evidence of the witness of the appellant, takes this Court, and rightly so done by the tribunal, to the conclusion that the vehicle was neither insured against dishonoured cheque nor there was any intimation given to insured about cancellation of the policy. Though sufficient reliance is sought to be placed at Exhibit-38, intimation of cancellation of policy to the insured and also cheque, it is required to be

noted that along with said cheque, there is a memo issued by banker i.e. Nath Urban Co-operative Bank Ltd., Hingoli and which also bears stamp of Standard Chartered Bank intimating that the said cheque was returned wherein drawer's name is Mahalaxmi Tractor Prop. Suresh Saraf. The appellant in clear terms failed to establish that such cheque was issued by said Dealer of the tractor towards insurance of the vehicle in question. In my opinion, the appellant herein has failed to discharge the burden cast upon him to demonstrate that the amount of premium was not received from the insured. Once it is established that the appellant herein has failed to establish their case as regards non receipt of premium because of dishonor of cheque, in my opinion, the view taken by the tribunal does not call for any interference.

19. Learned Counsel for the appellant herein has sought to place reliance upon the judgment of the Apex Court in the matter of ***United India Insurance Company Ltd. vs. Laxmamma*** and others reported in ***AIR 2012 SC 2817*** particularly paragraph No. 19, 20 and 21 which reads thus :

> "19. 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 polity covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.

20. Having regard to above legal position, insofar as facts of the present case are concerned, the owner of the bus obtained policy of insurance from the insurer for the period April 16, 2004 to April 15, 2005 for which premium was paid through cheque on April 14, 2004. The accident occurred on May 11, 2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated May 13, 2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on May 21, 2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy award of compensation passed in favour of the claimants.

21. In view of the above, the judgment of the High Court impugned in the appeal does not call for any interference. Civil appeal is dismissed. However, the insurer shall be at liberty to prosecute its remedy to recover the amount paid to the claimants from the insured. No order as to costs."

20. From the perusal of observations made by the Apex Court in paragraph-19 it is required to be noted that Apex Court was alive to the fact that as regards issuance of policy by an authorized insurer on receipt of

cheque towards premium, return of cheque as dishonoured coupled with the fact that cancellation of insurance policy by authorized insurer, an intimation of such cancellation has reached insured before the accident. From the evidence of witness examined by present appellant as observed herein above, it is required to be noted that neither the fact that cheque that was dishonoured was issued by insured in favour of insurer nor it is established that intimation of cancellation of insurance policy has reached to the insured either before the accident or subsequent to the accident.

21. In that view of the matter, in my opinion, the judgment cited supra will have hardly any assistance to the facts sought to be put forth by present appellant. Even otherwise, once having regard to the factual matrix observed herein above, the appellant herein has failed to discharge its burden, reliance placed on the provisions of Section 64-VB of the Insurance Act, 1938 will be of hardly any assistance. As such, present appeal fails, stands dismissed.

[**N.W. SAMBRE, J.**]

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