**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 2634 OF 2013
WITH
CIVIL APPLICATION NO.7995 OF 2013**

The Oriental Insurance Co. Ltd.,
Through its Branch Manager,
Lane No.5, Near Municipal Girls School,
Dhule, Dist. Dhule
Through its authorized signatory
Sr. Div. Manager, D.O.I.
Oriental Insurance Co. Ltd.
Aurangabad. ...Appellant

versus

1. Smt. Sulochana Bhimrao Suryawanshi,
Age: 58 years, Occu : Household,

2. Rajendra Bhimrao Suryawanshi,
Age: 36 yrs, Occu : Service,

3. Shailendra Bhimrao Suryawanshi,
Age: 28 yrs, Occ: Education,

4. Vijay Bhimrao Suryawanshi,
Age: 25 yrs, Occ: Education,

All R/o. Gulab Sadan, Gulabbhau
Nagar, Mohadi Upanagar, Dhule,
Dist. Dhule.

5. Khemsing Natthising,
Age: 46 yrs, Occ: Truck Driver,
R/o. Dopal Garh, Tahsil Pahari,
Dist. Bharatpur, H.P.
(deleted)

6. M/s. Varuna Road lines Pvt. Ltd.
Notice may be served on
Proprietor, R/o. Plot No. 619,
Rangpuri village, Near New Delhi-37. ...Respondents

.....
Mr. Dhananjay P. Deshpande, Advocate for appellant.
Mr. S.S. Patil, Advocate for respondent Nos. 1 to 4.
Mr. P.M. Gaikwad, Advocate for respondent No.6.
.....

CORAM : N.W. SAMBRE, J.

DATE : 10TH APRIL, 2015

ORAL ORDER :

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

2. The brief facts, as are necessary for deciding the issue in question, are as under :

That on 23/06/2007 one Bhimrao Ananda Suryawanshi, who was working as school teacher died in an accident, resulting into respondent Nos. 1 to 4 claiming compensation.

3. It was claimed by the claimants before the Motor Accident Claim Tribunal, Dhule that being a primary school teacher and also an agriculturist, the monthly income of the deceased was Rs.15,668/- and he met with an accident while riding the vehicle bearing Registration No. MH-18/T-9140 on Chalisgaon Dhule road having been hit by the truck bearing Registration No. HR-55/E-9532.

4. The said accident has resulted into registration Crime No. 55 of 2007 for an offence punishable under Sections 304-A, 279, 427 of Indian

Penal Code with Sections 184, 134, and 177 of the Motor Vehicles Act, 1988.

5. Based on the claim, the tribunal framed the following issues at Exhibit-21 and same are answered accordingly.

1-Does claimant prove that the accident took place due to rash and negligent act of driver of the offending vehicle bearing truck No. HR-55/E-9532?	.. In the affirmative.
2-To what relief and compensation, if any, is the claimant entitled?	.. As per final order.
3-What order?	.. As per final order.

6. The tribunal, based on the evidence of two witnesses examined on behalf of the claimants i.e. petitioner No.1 Sulochana at Exhibit-36 and PW-2 Sham Atmaram Suryawanshi at Exhibit-49, F.I.R. (Exhibit-39), post mortem report (Exhibit-40), driving licence of truck driver-Khemsing (Exhibit-41), certificate of registration of the truck (Exhibits-42 and 43) and insurance policy (Exhibit-44), has ordered payment of compensation of Rs.13,16,368/- against the present appellant and respondent No.5 with interest @9% p.a. As such, present appeal.

7. Mr. Deshpande, learned Counsel for the appellant has invited my attention to the Civil Application No. 7995 of 2013 which is moved by the Insurance Company under Order 41 Rule 27(1)(aa) and (b) of the Code of Civil Procedure, so as to canvass that the cover note which was issued in favour of respondent No. 6 was cancelled for dishonour of the cheque and the said fact could not be brought to the notice of the tribunal at the relevant time, as the same was not traced out in the office of Insurance Company. In addition to above, he would urge that if the application under Order 41 Rule 27 of the Code of Civil Procedure is granted, the matter be remanded back to the tribunal for recording of fresh evidence, as according to him, the Insurance Company is not liable to pay the amount claimed.

8. He has placed reliance upon the provisions of sub section (3) of Section 147 of the Motor Vehicles Act, 1988 (for short "the Act") so as to submit that the liability in question cannot be fastened on the appellant. Sub-section (3) of Section 147 of the Act reads thus :

> *"147(3). A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other*

prescribed matters; and different forms, particulars and matters may be prescribed in different cases."

9. The above referred submissions of the present appellant if are considered in the light of judgment delivered by the tribunal and that of pleadings in support of the prayer for production of documents under Order 41 Rule 27 of Code of Civil Procedure, it is noted that the appellant Insurance Company vide Exhibit-20 while opposing the claim that the driver of the truck was not holding valid licence. They have also come out with contributory negligence theory.

10. Learned tribunal having considered the evidence of claimant Sulochana at Exhibit-36 and PW-2 Sham Suryawanshi at Exhibit-49 who has produced service record in relation to deceased, has established in support of monthly salary of the deceased to be Rs.15,668/-.

11. Learned tribunal has also taken into account the contents of F.I.R., spot panchnama and has noticed that the motor cycle of the deceased was damaged from the back side and as such, formed an opinion that the driver of the truck has driven the vehicle in rash and negligent manner resulting into cause of death as is apparent from the post mortem report. The tribunal has also considered the evidence of PW-2, Junior Clerk of Panchayat Samiti

and has given findings that as per 6th Pay Commission, the deceased was drawing monthly salary of Rs.20,412/-.

12. Perusal of the application referred under Order 41 Rule 27 of Code of Civil Procedure reflects that cover Note No.523342 issued in favour of respondent truck owner was cancelled. It is claimed that the appellant was unaware about cancellation of cover note. It is claimed by the appellant that after award, on 27/09/2012 the appellant herein has received instructions from Delhi office that cover note was cancelled as no policy was issued to respondent No.6 and as such, the vehicle was never insured with the appellant. It is claimed that the said policy was cancelled immediately in February,2007, however the said cancellation was not brought to the notice of the appellant.

13. If the above referred contentions are considered about cancellation of policy in the wake of sub section (3) of Section 147 of the Act. It is required to be noted that sub section (4) of Section 147 of the Act contemplates notifying the fact to the registering authority about vehicle i.e. truck in question was registered and also to any other authority.

14. Admittedly, in the present case, no such fact was notified by the appellant to the authority with whom the vehicle in question

was registered. It is also required to be noted that alleged cancellation also appears to have been not brought to the notice of the owner of the vehicle as no such intimation is brought on record. The relevant observations 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 is worth referring to, 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.*

15. The Apex Court while dealing with the scheme under Section

147 and 149 of the Act has observed that cancellation of the policy should be intimated to the owner, whereas in the present case, no such intimation is brought on record. Even the fact that cancellation of the policy was neither established before the tribunal nor before this Court as the said cancellation was available with ***United India Insurance Company*** the appellant in February, 2007, as is claimed by them. Once the document is coming from the custody of the appellant, the appellant owes an application as to why the said document was not produced at appropriate time.

16. Though Mr. Deshpande, learned Counsel for the appellant has sought to raise two-fold contentions; (a) that in the light of provisions of sub section (3) of Section 147 of the Act, the cover note issued in favour of respondent No. 6 in absence of policy will be of no effect or liability of the appellant and (b) that cover note itself was cancelled for non payment. However, in my opinion, both these contentions raised by the appellant are liable to be rejected for the following reasons.

Section 147(3) of the Act speaks of policy of being no effect for the purpose of claim, until it is followed by the certificate of insurance in the prescribed form. It is required to be noted that the claim put forth by the appellant is that, no certificate of policy was issued in favour of respondent No. 6. If the said contentions are to be accepted, there has to be sufficient communication to that effect for non issuance of certificate in favour of respondent No.6. So far as next contention about cancellation of cover note is concerned, admittedly perusal of the attested photo copies of the cover note and endorsement of cancellation of the said cover note, though sought to be pressed into service, however nothing is brought on record to show that same was brought to the notice of respondent No.6. The judgment of the Apex Court discussed supra in the matter of ***United India Insurance Company Ltd.*** will be of assistance in the present matter.

17. It is not the case of the appellant that cancellation of the cover note was intimated to respondent No. 6. In fact, no such pleadings or evidence is brought on record either in the form of evidence or otherwise including the application under Order 41 Rule 27 of Code of Civil Procedure.

18. As such, present appeal lacks merit, stands dismissed.

19. As such, application under Order 41 Rule 27 of Code of Civil Procedure also stands rejected.

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

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