$~A-7 & 8

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

***Judgment pronounced on: 20.02.2015***

\+ **MAC.APP. 22/2011 and CM Nos.245/2011 (stay) & 8749/2011 (for release of amount)**

BAJAJ ALLIANZ GEN INSURANCE CO LTD ..... Appellant

Through Mr.Rajat Brar, Advocate.

versus

MEENA & ORS ..... Respondents

Through Mr.R.K.Yashwant Singh, Advocate for R-1 to 5.

Mr.Pawan Kumar Singh, Advocate for R-7.

\+ **MAC.APP. 23/2011 and CM No.255/2011 (stay)**

BAJAJ ALLIANZ GEN INSURANCE CO LTD ..... Appellant

Through Mr.Rajat Brar, Advocate.

versus

ANGOORI DEVI & ORS ..... Respondents

Through Mr.S.K.Singh, Advocate for R-1 to 5.

Mr.Pawan Kumar Singh, Advocate for R-7.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J.**

1. The present two appeals are filed seeking to impugn the common award dated 15.11.2010.

2. The brief facts are that on 03.04.2007 the deceased Kanahiya Lal (driver) and Sh.Giriraj (helper-cum-cleaner) were going on a truck to Madras via Bhopal from Delhi. In district Rajgarh, their truck was hit by another truck which came from the opposite side in a rash and negligent manner.

Sh.Kanahiya Lal and Sh.Giriraj suffered serious injuries and succumbed to the same.

3. The issue centres around the liability of the appellant. Learned counsel appearing for the appellant submits that the offending truck was not insured under a cover of the Insurance Policy. It is urged that the cheque issued by respondent No.7, the owner of the offending vehicle towards premium for the policy, was returned unpaid with the observation that the payment has been stopped. The appellants claim that they have intimated respondent No.7 about the dishonour of the cheque and cancellation of the insurance policy vide letter dated 08.03.2007. Hence it is urged that there was no subsisting insurance policy between the appellants and respondent No.7.

***4.*** Learned counsel appearing for respondent No.7 however denies the contentions of the appellant. He submits that the cheque no doubt was dishonoured but no intimation of dishonour was sent. He further states that the premium has been paid in cash and the entry in the cash book of respondent No.7 is also available. Learned counsel relies upon the judgments of the Supreme Court in the case of ***United India Insurance Company Ltd. vs. Laxmamma & Ors., (2012) 5 SCC 234*** and ***Oriental Insurance Co. Ltd. vs. Inderjit Kaur & Ors., 1998 ACJ 123***.

5. A perusal of the award shows that the Tribunal noted the submission of the appellant and relying upon the judgment of the Supreme Court in the case of ***Oriental Insurance Co. Ltd. vs. Inderjit Kaur & Ors.(supra)*** held that third party liability will not come to an end once the insurance policy is issued by the insurance company.

6. A perusal of the evidence of R3W1 Ms.Sunanda Nimisha from the appellant company shows that she has in her evidence stated that the vehicle in question was insured under the Policy No.OG-07-1104-1807-00010618. It is stated that the requisite insurance premium was made by cheque dated 11.01.2007 for Rs.2,34,328/- and was issued on the belief that the cheque would be honoured. However, when the cheque was presented to the banker it was returned unpaid on the ground 'payment stopped'. Thereafter on 08.03.2007 an intimation was sent to respondent No.7 cancelling the insurance policy. The courier receipt has been filed as mark 'A'.

7. In cross-examination she states that the premium of the offending vehicle was Rs.6,310/-. She further clarifies that many vehicles were being insured. Cheque of Rs.2,34,328/- was for getting 16 insurance policies of different vehicles which were obtained over the period 28.02.2007 to 27.2.2008. She admits that the courier receipt does not bear year or the address of respondent No.7.

8. In my opinion, there is no adequate proof to show that respondent No.7 was duly informed about the dishonour of cheque. The intimation of dishonour Ex.R3W1/4 is dated 08.03.2007. The courier receipt gives no date. It also does not give complete address of the addressee. No proof of receipt of the communication is placed on record.

9. The Supreme Court in the case of ***United India Insurance Company Ltd. vs. Laxmamma & Ors.(supra)*** after noticing the judgment of the Supreme Court in the case of ***Oriental Insurance Co. Ltd. vs. Inderjit Kaur & Ors.(supra)*** in para 26 held as follows:-

> "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 the authorized insurer to indemnify the 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 dishonored 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."

10. In the absence of any cogent proof of service of notice of intimation of dishonour of cheque to respondent No.7 and in view of the legal position it cannot be said that the insurance policy or third party liability came to an end.

11. Even otherwise, the above conclusion is supported by the confused manner in which the evidence has been led by the appellant. R3W1 in her affidavit clearly states that the cheque is for Rs.2,34,328/- dated 11.01.2007. The premium for the vehicle in question is Rs.6,310/-. How the cheque is co-related to the premium of Rs.6,310/- is not explained in the affidavit by way of evidence. In the cross-examination, it is said that there are 16 insurance policies for which the cheque was given. However, the intimation letter regarding dishonour of cheque dated 08.03.2007 does not mention any such

thing and simply cancels the policy in question i.e. OG-07-1104-1807-00010618. Further the cheque is dated 11.01.2007. The return memo is dated 01.03.2007. There is no explanation why the appellants took nearly two months to send the cheque for clearing. Further, the insurance policy which is issued does not mention any cheque number on the policy. It only indicates a premium of Rs.6,310/- payable. There is no basis to co-relate the insurance policy with the cheque of Rs.2,34,328/- that is returned dishonoured. Hence, even otherwise the evidence led by the appellant is not coherent and cannot be relied upon

12. There is no merit in the present appeal and the same is dismissed.

13. The statutory amount, if any, be refunded.

14. All interim orders stand vacated.

15. All pending applications stand disposed of.

**JAYANT NATH, J**

**FEBRUARY 20, 2015/rb**