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

Pronounced on: 29th June, 2015

\+   **MAC. APP. 811/2006**

THE ORIENTAL INSURANCE CO. LTD.   ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

JITENDER AND ORS.   ..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

<u>J U D G M E N T</u>

<u>G. P. MITTAL, J.</u>

<u>CM APPL.13045/2006 (delay)</u>

1. For the reasons as stated in the application, delay of 85 days in filing the appeal is condoned.

2. Application stands disposed of.

<u>CM APPL.13044/2006 (stay)</u>

1. By an order dated 18.07.2007, the execution of the impugned award had been stayed, if the award had not been satisfied.

2. As per the report made by the Registry, the amount was deposited with the Claims Tribunal and was duly paid to the Claimants.

3. The application is, therefore, dismissed as having become infructuous.

MAC. APP. 811/2006

1. The appeal is directed against the judgment dated 25.03.2006 whereby compensation of ₹4,60,000/- was awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents no.1 to 3 for the death of Raj Kumar, who suffered fatal injuries in a motor vehicular accident which occurred on 04.08.2004.

2. The sole ground of challenge raised by the learned counsel for the Appellant is that during inquiry before the Claims Tribunal, the Appellant sufficiently established that the cheque in respect of premium for the policy issued to cover the risk in respect of vehicle no.HR-47G-0376 was dishonoured. The Insurance Company also duly intimated the insured about dishonour of the cheque. That having been done, the Insurance Company had no liability to pay the compensation. In any case, even if the Appellant was obliged to discharge third party liability, it ought to have been permitted to

at least recover the amount of compensation paid from the insured.

3. The Claims Tribunal while relying on the judgments of the Supreme Court in *National Insurance Company Limited v. Seema Malhotra & Ors., (2001) 3 SCC 151* and *Oriental Insurance Company Ltd. v. Inderjit Kaur & Ors. (1998) 1 SCC 371,* held that once the policy of insurance was issued only on receipt of a cheque towards premium in contravention of provision of Section 64-VB of the Insurance Act, the Insurance Company was obliged to indemnify third parties. The Claims Tribunal further relied on the judgment of Andhra Pradesh High Court in *M. Nageswara Rao v. New India Assurance Company Limited & Ors., 2004 ACJ 1554* where it was held that where the cheque is dishonoured, the drawer has to be informed about the dishonour of the cheque and given an opportunity to make good the loss sustained by the drawee. Since the Insurance Company had failed to prove that any such notice was issued to the insured, the Insurance Company is not exempted from indemnifying the insured.

4. Before adverting to the law on the subject, it will be appropriate to analyse the facts leading to the dishonour of the cheque and the steps taken by the Appellant to inform the insured about the

dishonour of the cheque and subsequent cancellation of the Insurance Policy. Respondent Kailash Chand was the owner (and the insured) of vehicle no. HR-47G-0376. In its written statement, the Appellant Insurance Company stated that the cover note no.330027 dated 02.08.2004 issued by it became invalid on account of dishonour of the cheque issued towards premium. The Appellant got the information of the dishonour of the cheque *vide* memo of the Bank dated 13.08.2004 and the same was informed to the insured on 01.09.2004. Thus, it was pleaded that the Insurance Company had no liability at all as the contract of Insurance on account of non-payment of the premium became void.

5. The insured filed an Affidavit in the shape of reply and stated that the risk was covered for the period 03.08.2004 to 02.08.2005 by the cover note dated 02.08.2004. The accident occurred on 04.08.2004. The cheque given towards premium was not dishonoured because of '*Insufficient Funds*' but due to alleged difference in signatures.

6. In his cross-examination, the insured as R1W1 admitted having come to know about the dishonour of the cheque on 02.09.2004 when he received a letter from the insurance company. He stated

that he did not check his statement of account for the period 03.08.2004 to 02.09.2004.

7. The Appellant Insurance Company examined S.N. Ratra, Assistant Administrative Officer as R3W1 who testified that the intimation regarding dishonour of cheque was sent from their office only on 01.09.2004 and that the insured requested the Company to issue another policy on 06.09.2005. He admitted that the reason for dishonour of the cheque was difference in signatures.

8. From the facts, it is not in dispute that the Insurance Company had voluntarily agreed to cover the risk of third party in respect of the vehicle no.HR-47G-0376 on mere issuance of a cheque towards the premium. Admittedly, it takes time in realisation of the amount. No intimation regarding dishonour of the cheque was issued to the insured and to the RTO in respect of cancellation of the policy on account of dishonour of the cheque before the date of the accident. In fact, that could not have been done as the cover note was issued only on 02.08.2004 and the accident occurred on 04.08.2004.

9. The issue is covered by the latest judgment of the Supreme Court in *United India Insurance Company Limited v. Laxmamma & Ors., (2012) 5 SCC 234* wherein relying on *Oriental Insurance Company*

Limited v. Inderjit Kaur, (1998) 1 SCC 371, New India Assurance Company Limited v. Rula, (2000) 3 SCC 195 and *Deddappa & Ors. v. Branch Manager, National Insurance Company Limited, (2008) 2 SCC 595,* the Supreme Court held as under:-

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

10. The intimation regarding the cancellation of the Insurance Policy on account of dishonour of the cheque was done by a letter Ex.RW1/A dated 01.09.2004. Thus, intimation of cancellation of the Insurance Policy was not issued to the insured before the date of the accident. Moreover, in the instant case, the cheque was not

dishonoured on account of insufficient funds. In fact, it is established that there were funds to honour the cheque issued towards premium on the date the cheque was issued and the cheque was dishonoured merely on account of alleged difference in signatures.

11. Thus, following the Supreme Court report in *United India Insurance Company Limited v. Laxmamma & Ors., (2012) 5 SCC 234,* the Insurance Company was under an obligation to indemnify the insured.

12. The appeal, therefore, has to fail; the same is accordingly dismissed.

13. The statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

14. Pending application, if any, stands disposed of.

(G.P. MITTAL)
JUDGE

JUNE 29, 2015
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