IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

First Appeal NO. 427 OF 2014
with
Civil Application NO. 3456 OF 2015

United India Insurance Company Limited ...Appellant
Versus
Mr Prakash Ganpat Waghmare & Anr. ...Respondents

Ms.Varsha Chavan, for the Appellant.

Ms.Kavita Anchan, for Respondent No.1.

None for Respondent No.2

CORAM : G.S.KULKARNI, J.

DATE : 29th NOVEMBER, 2016.

P.C. :

1. Heard finally by consent of the parties. Respondent No.2 – Insured did not appear before the Motor Accident Claims Tribunal (for short 'the Tribunal'), as also is not appearing in this appeal.

2. This appeal arises against the judgment and award dated 28 June 2012 passed by the learned member of the Tribunal in Application No.1959 of 2000 whereby Respondent No.1 (original claimant) has been

awarded compensation of Rs.4,19,000/-. The operative portion of the order reads thus:-

> " ORDER
>
> 1. Application is partly allowed with proportionate costs.
>
> 2. The Opposite Parties, owner and the Insurer do pay jointly and severally compensation amount of Rs.4,19,000/- (Rupees Four lac Nineteen Thousand only) inclusive of NFL amount if any alongwith interest at the rate of 7.5% p.a. from the date of application till its realization.
>
> 3. The Opposite Parties, owner and the Insurer are directed to deposit entire compensation amount by A/c. Payee cheque drawn in the name of applicant with the Office of the Tribunal.
>
> 4. On depositing the compensation, entire amount be paid to the applicant by A/c. Payee cheque after due identification on recovery of the deficit Court fees, if any, by the Tribunal to applicant.
>
> 5. Award be drawn up accordingly."

3. Respondent No.1 had approached the Tribunal making a claim for compensation of Rs.7,50,000/-, in view of disability suffered by him in the accident namely amputation of left hand. Respondent No.1 claimed

that he was working as an Auto-rickshaw driver and was earning Rs.5,000/- per month. The defence of the Appellant-Insurance Company was that the Appellant was not liable to pay compensation as the cheque dated 18 April 2000 issued by the insured – Respondent No.2 to pay the premium was dishonoured and was returned by the concerned bank with a note that "funds expected present again". The case of the Appellant is that on receipt of this communication from the bank, Respondent No.2 -Insured was intimated by letter dated 27 April 2000 and a further communication dated 19 May 2000 was also issued that the effective date of endorsement in regard to the cancellation of the policy is 19 May 2000. It has come on the record of the tribunal that both these communications were transmitted to Respondent No.2-Insured by post on 2 June 2000. The endorsement of the concerned post office also shows that it is transmitted on 2 June 2000 and received by Respondent No.2 on 5 June 2000.

4. Admittedly, the accident had taken place on 8 May 2000, that was before the above letters were forwarded and received by Respondent No.2. The Tribunal did not accept this defence of the Appellant and by the impugned judgment awarded the above compensation.

5. On the background of these facts the only contention which is being urged on behalf of the Appellant is that the impugned order should not be construed so as to preclude the Appellant from recovering compensation as awarded by the Tribunal from Respondent No.2-Insured. It is submitted that except for this plea the Appellant-Insurance company has no reservation to honour the claim as awarded by the Tribunal. In support of this submission reliance is placed on a decision of the Supreme Court in the case "***United India Insurance Company Limited Vs. Laxmamma and others***"[1] wherein the Supreme Court considering the consequence of dishonour of a cheque and the liability of the insurance company to make payment of compensation to indemnify third parties, observed that the Insurer shall be at liberty to prosecute its remedy to recover the amount paid to the claimants from the insured. On the basis of this observation, it is contended that the Insurance Company that is the Appellant should be permitted to assert its claim against Respondent No.2. In my opinion it would be open for the Appellant to pursue its claim against Respondent No.2 as permissible in law, considering the following observations of the Supreme Court in paragraph 28 of the above decision which read thus:-

1 (2012)5 SCC 234

> "28. In view of the above, the judgment of the High Court impugned in the appeal does not call or any interference. The 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." (emphasis supplied)

6. In any event, considering the facts of the present case the endorsement in regard to cancellation of the policy is 19 May 2000 which came to be posted by the Appellant to the insured on 2 June 2000 and received by him on 5 June 2000. It is thus clear that the intimation of the cancellation had reached the insured after the accident occurred. If this be the position then the ratio of the decision by the Supreme Court in "***United India Insurance Company Limited Vs. Laxmamma and others"*** (supra) squarely applies. In ***Laxmamma***'s case the Supreme Court after considering the provisions of Section 64-VB of the Insurance Act,1938 and Sections 145, 146, 147 and 149 of the Motor Vehicles Act 1988 and the previous decisions on the issue, held that in regard to a policy of insurance issued by the authorised insurer, the liability of the insurer to indemnify the third parties under the policy subsists, unless the insurance policy is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. Their Lordships in paragraph 26 have held as under:-

> "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 a cheque is returned dishonoured, the liability of authorized 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 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."

The legal position as laid down in the above decision of the Supreme Court thus is clearly applicable to the facts of the present case. Respondent No.1 cannot be denied the award of compensation as granted by the Tribunal.

7. Resultantly, in view of the aforesaid clear position in law the impugned judgment and award does not call for any interference except that the rights of the Appellant to prosecute its remedy to recover the

amount paid to the claimant from the insured are required to be kept open. Ordered accordingly. Needless to observe that all contentions of the Appellant and Respondent No.2 in that regard are kept open.

8. As regards the amount awarded under the impugned judgment and award by the Tribunal, the same has been deposited by the Appellant with the Tribunal. Respondent No.1 is permitted to withdraw the said amount with accrued interest.

9. An amount of Rs.25,000/- which is deposited in this court be transferred to the Tribunal alongwith the accrued interest, within a period of two weeks from today.

10. The appeal is accordingly dismissed however subject to the above observations. No costs. Civil Application would also not survive and is accordingly disposed of.

[G.S.KULKARNI, J.]