**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**XOBJC No. 263-CII of 2015 and
FAO No. 3023 of 2006 (O&M)
Date of decision: 05.02.2016**

National Insurance Company Limited

... Appellant

versus

Smt. Bimla and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.C. Gupta, Advocate for the appellant.

Mr. J.C. Malik, Advocate for
respondent Nos. 1 & 2/cross objectors.

K.Kannan, J. (ORAL)

This is an appeal by the Insurance company on the issue of liability and quantum. There is a cross objection filed at the instance of the claim for enhancement.

It was a case of death of a boy aged 16 in a road accident involving a school bus. The Tribunal has determined a compensation of Rs. 2,02,000/- considering the fact that he was studying in a school in +2 and the claimants namely the appellants would require to be compensated taking Rs. 1,000/- as a contribution to the family.

The Insurance Company denied liability contending that on the relevant date of the accident on 29.11.2001 there was no subsisting policy. The insurer however admitted to issuance of cover note in the name of the school but had a case to contend that soon after the issue it was noticed that the cheque was being drawn by a person who was not the insured but was said to be a part of the management of the school who had drawn the cheque in his own personal name. The insurer wanted a fresh cheque to be issued by the insured himself. According to the insurer the said information was given to the drawer of the cheque who received back the cheque and assured to return with cash. Since he did not return as promised, the office of the Insurance company prepared a letter of cancellation and delivered it to the principal of the school. The principal acknowledged the cancellation of the policy on 29.11.2001. The insurer examined the officer who had issued the cover note and who had prepared the cancellation intimation and also an expert as RW-6 to vouch for the genuineness of the signature of the principal of the school. The letter of cancellation with acknowledgment of the principal was confronted to the principal who was examined as RW-1. He denied his own signatures and the attempt of the insurer was, therefore, to secure the expert who affirmed what it was contending.

It became most essential to examine whether the cover note had been cancelled on the 29^{t}.11.2001 itself to consider if it should be exonerated from liability, since the accident had taken place the following day on 30.11.2001. The person who was said to have issued the cheque was also examined in the case by the school who did not even admit that he drew the cheque and delivered it to the Insurance

Company. On the other hand, he said he did not know who the insurer was and wanted to deny the whole episode of any contact with the insurer. The Tribunal found the cover note as true and awarded the compensation against the Insurance Company.

The counsel for the Insurance Company points out to me that Kuldeep Singh who had actually delivered the cheque was not even prepared to admit that he handed over the cheque. The school did not have a contention that they had delivered the cheque and the Principal also wanted to only contend that they had sent the money through Kuldeep Singh. The Insurance Company produced the Bank account of Kuldeep Singh to show that on the date when the cheque was issued on 29.11.2001 there was not even enough cash available to the credit of the account of Kuldeep Singh. Counsel for the school would respond to the arguments of the Insurance Company by contending that there was admission that the officer of the Insurance Company had previous acquaintance with Kuldeep Singh and if there was no scope for receiving the cheque, the normal conduct would have been only to go after Kuldeep Singh and collect the cash. Instead of delivering a letter of cancellation, they could have collected the money itself from the school which would have been the normal conduct. In this case, the Insurance Company was fabricating the letter of cancellation only because they had come to know that the accident involving the school bus had taken place the following day and since the cheque had also not been encashed by that time, they were trying to make up a case as through there was a cancellation of the cover note on that day itself. It is also the contention of the owner that the hand-writting expert evidence cannot be believed for it is not an exact science. It is also contended that there is no rule that Insurance Company could not have received a cheque from a person other than the insured.

To me the most crucial issue is whether there was a valid contract of insurance by a proposal made by a person who seeks a policy and acceptance by the insurer. Section 64 VB states as under:

> 64VB. No risk to be assumed unless premium is received in advance.
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> (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.
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> 2..........................
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> 4..........................
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> 5.........................

This Section enumerates the fundamental principle of contract that a contract without consideration cannot be valid. A contract can even be executory and consideration could be an amount promised to be paid in future as well. If the cheque was issued on the day and cover note was being issued, it was always to be taken as provisional that could allow for cancellation of the policy if the consideration had not been received. There is nothing inherently wrong about the issuance of a cover note on an explanation that the cheque would be honoured and consideration of the amount to be paid in future to be adjusted against the liability undertaken under the policy. In this case, if the issuance of cover note itself was admitted and under normal circumstances, if an accident had taken place, before the cancellation of policy even the dishonour of cheque cannot avail to the insurer to ward off liability by a claim by 3rd party. However, if the cancellation of policy had been done before the accident, there is no way that even the 3rd party could make a claim against the insurer, for, in such an event, it must only be taken that there existed no policy of insurance under which an insurer could be made liable even to 3rd party.

The issue would be, therefore, whether the cancellation of policy was made on 29.11.2001 as asserted by the insurer to a point on whether there was any impediment for the insurer to receive a cheque other than the insured. Learned counsel appearing on behalf of the Insurance company points out to me the accounts manual that controls the conduct of the representatives of the insurer Rule 5.2.2.2 of Chapter 5 of the Accounts Manual reads as :

> Cheques drawn by the Development Officers/Agents or third parties to the insurance are not acceptable in respect of premium receipts. However, cheques issued by Financiers and Banks may be accepted where there is a hire purchase agreement or financial interest

> involved. Cheques issued by a firm on behalf of its partners and by the guardian/parent on behalf of a minor or by spouse or other blood relations of the insured can be accepted if supported by a proper covering letter from the insured/sender provided the same is permitted by the Officer-in-charge.

If the Insurance Company was, therefore, stating that it was not possible for it to receive the cheque from a person who was not insured, then it had surely a reason to do so, backed by a regulation to that effect. If the owner of the bus, namely, the society that runs the school, had a contention to make that the representative of the school had actually paid the cash and the cover note had been issued, the cancellation of cover note cannot be supported at all. On the other hand, if the contention was that Kuldeep Singh had delivered a cheque, then Kuldeep Singh's evidence is important whether he had actually done so and whether he had problems to come back with cash in the manner stated by the witness of the Insurance Company.

Curiously Kuldeep Singh denied any knowledge of who the insurer was. He also denied that he went to insurance office to pay the insurance premium. If the school Principal did not pay the premium and Kuldeep Singh did not admit that he issued the cheque then it must only be seen whether any of the contentions by the Principal of Kuldeep could be true. It must be seen that if there was a contract of policy at all, then the school could not have had the benefit of indemnity. The cheque ought to have been delivered, for, without the delivery of cheque there was no way that payment of premium could have been made. It was not the evidence of the school that Kuldeep Singh paid the amount by cash. If cash was not paid and the cheque had been delivered by Kuldeep Singh and if Kuldeep Singh was denying that he ever went to the Insurance Company, he was speaking untruth only to hide the fact of the imputation made against them that he took back the cheque promising to replace it with cash which he did not. In the context of evidence of Kuldeep Singh, it is not difficult to reason why the principal was also denying his own signature. I will not place reliance in expert's evidence but I take it as a natural event that if the cheque had been taken back by Kuldeep Singh, the cancellation of policy was an obvious sequeter and the cancellation ought to be true and the principal was denying his own signature only to fasten liability on the insurer and secure indemnity to the Society that runs the school.

On the analysis of the evidence in the manner that I have undertaken, I set aside the finding recorded by the Tribunal and hold that there was no policy of Insurance on the relevant date on the basis of which the insurer could be made liable.

There is a cross-objection for enhancement of compensation. The deceased was a class XI student and was said to be earning by imparting tuition. I discard the evidence as unnatural, project as an average contribution to the family at Rs. 2,000/- and apply a multiplier of 6 and take the loss of contribution to the family of parents at Rs. 2000 x 12 x 16=3,84,000/-. I shall make a fruther provision for loss of love and affection at Rs. 1,00,000/- and provide for funeral expenses at Rs. 10,000/- as already awarded. The total compensation shall be Rs. 4,94,000/-. the corss objections have been filed after a delay of 13 years. The delay is condoned but the addiontal compensation shall attract interest at 7.5% from the date of the cross objections in this Court.

Fatal	Date of accident	30.11.2001	
Age	16		
Occupation	Tutor		
Claimants	Mother, father		
SR. No.	**Heads of claim**	**Tribunal Amount (Rs.)**	**High Court Amount (Rs.)**
1	Income	2,400/-	2,000/-
2.	Add, % of increase, 30%/50%		
3.	Deduction, 1/2, 1/3, 1/4,		
4.	Multiplicand	1000 x 12	2000 x 12
5.	Multiplier	16	16
6.	Loss of dependence	1,92,000/-	3,84,000/-
7.	Medical Expenses		
8.	Loss of Consortium		
9.	Loss of love and		1,00,000/-

	affection		
10.	Loss to estate		
11.	Funeral Expenses	10,000/-	10,000/-
	Total	2,02,000/-	4,94,000/-

Consistent with the findings in this appeal, the liability shall be only on the owner and driver of the bus. Cross objection is allowed to the above extent.

(K.KANNAN)
JUDGE

18.02.2016
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