

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

CWP No. 252 of 2014

Date of decision:10.03.2016

The Oriental Insurance Company Ltd.

.....Petitioner

versus

Adarsh Sharma and another

.....Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Ashwani Talwar, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Akshay Jindal, Advocate
for respondent No. 1.

Mr. Vishnu, Advocate for
Mr. Sumeet Goel, Advocate
for respondent No. 2.

Rakesh Kumar Jain, J.(Oral)

The Oriental Insurance Company Ltd.(for short, 'the Company') has assailed the validity of the order passed by the Permanent Lok Adalat (PUS), Sonapat Camp at Panipat dated 28.10.2013 by which an application filed by respondent No. 1 under Section 22C of the Legal Services Authorities Act, 1987 (for short, 'the Act') has been allowed.

In short, the facts of the case are that respondent No. 1 had purchased "*Happy Family Floater Policy*" of ₹1,00,000/- w.e.f. 18.10.2011 to 17.10.2012 from the petitioner. For the purpose of renewal of this policy for ₹1,50,000/- w.e.f 18.10.2011 to 17.10.2012 respondent No. 1 handed over a cheque bearing No. 540425 of

₹3,715/- on 10.10.2012 out of the total premium of ₹5,124/- and also deposited ₹1409/- in cash. The policy was issued on 11.10.2012 for the period w.e.f 18.10.2012 to 17.10.2013 and identity card was also issued in favour of the whole family. However, the cheque bearing No. 540425 dated 10.10.2012 was dishonored by the drawee bank. The petitioner cancelled the policy on 23.10.2012 on the ground that his cheque bearing No. 540425 dated 10.10.2012 was dishonored by the drawee bank. Petitioner sent this information to respondent No. 1 on 10.11.2012 which was received on 12.11.2012. Respondent No. 1 deposited a cheque of ₹3715/- drawn on 10.11.2012 with the petitioner which was not accepted and the amount of ₹1409/- deposited in cash also returned in February, 2013.

Aggrieved against the aforesaid action of the petitioner, respondent No. 1 filed an application under Section 22-C of the Act before the Permanent Lok Adalat (PUS)(for short, 'the Adalat') which has been allowed on the ground that there was clerical mistake in the cheque as it was wrongly mentioned ₹3750/- instead of ₹3715/- and as such there was no intention on the part of respondent No. 1 of not paying the premium by way of cheque in time. Accordingly, while allowing the application, it was also held that respondent No. 1 is entitled to the continuity of the policy from the beginning till date.

Counsel for the petitioner has submitted that since respondent No. 1 did not pay the premium of the policy as the cheque drawn by him on 10.10.2012 was dishonored by the

drawee bank, therefore, there was no contract between the parties. As a result, thereof, petitioner had rightly cancelled the contract on 23.10.2012 and accordingly, intimated respondent No. 1 on 10.11.2012 and thereafter, any cheque deposited by respondent No. 1 is of no consequence. In support of his submission, he has referred to Section 64 VB of the Insurance Act, 1938 (for short, the Act 1938) and also relied upon the judgment of the Supreme Court in the case of *Deokar Exports Pvt. Ltd. vs. New India Assurance Company Ltd.* 2009 AIR(SC) 2026. He has also pointed out that in the policy it was specifically mentioned that “*in case of dishonor of premium cheque(s) the Company shall not be liable under the policy and the policy shall be void ab initio (from inception).*”

On the other hand, counsel for respondent No. 1 has submitted that the contract between the parties was not terminated because the petitioner had retained the part payment of the premium i.e. amounts to ₹1409/- paid in cash and that the rest of the premium was paid on 29.10.2012 by way of cheque. It is also submitted that the petitioner has not sought any indemnification from the date when the policy was issued till the aforesaid payments were made, therefore, the decision in the case of *Deokar Exports Pvt. Ltd. (supra)* would not be applicable to his case. Rather he has relied upon the judgment of the Supreme Court in the case of *National Insurance Co. Ltd. vs. Seema Malhotra* 2001(1) PLR 826.

I have heard both the learned counsel for the parties, and perused the available record with the able assistance.

The question involved in this case is “*as to whether the*

premium paid by an insured through cheque which is ultimately dishonored, the insurance company is liable if the deficiency in the premium is made good by the insured before seeking any indemnification?"

Before advertng to the question of law involved, I would refer to Section 64 VB of the Act, 1938 which is reproduced as under:-

No risk to be assumed unless premium is received in advance.

64VB. (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.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation. ' Where the premium is tendered by postal money-order or cheque sent by post, the risk may be assumed on the date on which the money-order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the

insurer directly to the insured by a crossed or order cheque or by postal money-order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collections excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) In respect of particular categories in insurance policies.+

There is no dispute that respondent No. 1 had issued the cheque of part payment of premium and committed clerical error in it while mentioning the amount in words. Actually respondent No. 1 had correctly mentioned the amount of premium in figures i.e. ₹3,715/- but due to inadvertence, the amount of premium was wrongly mentioned in words as ₹3,750/- instead of ₹3,715/-. Thereafter, the bank did not honor the cheque and returned the same to the petitioner who had presented it. It is also not disputed that the petitioner had retained the rest of the amount of premium paid in cash of ₹1,409/- and had returned after a long time. In order to decide the question of law, framed in the earlier part of this order, it would be relevant to refer to the decision of the Supreme Court in the case of *Deokar Exports Pvt. Ltd.(supra)*,

relied upon by counsel for the petitioner in which the following observations have been made:-

“In this case, the proposal sent by the appellant was received by the insurer on 16.6.1989. It required that the period of insurance cover should be for the period 12.3.1988 to 12.9.1989. The reason why the respondent wanted the insurance cover retrospectively from 12.3.1988 is obvious. The initial insurance policy expired on 12.3.1988. Under the terms of finance between MSFC and the appellant, apparently it was necessary to have an uninterrupted and continuous insurance cover during the period the machine was secured in favour of MSFC. Therefore, the appellant wanted the insurance cover to be continued by way of renewal for the period 2.3.1988 to 12.9.1989. But the premium amount for one year was received by the insurer only on 26.8.1988. Having regard to the bar contained in Section 64-VB of the Act, the insurer could not accept the request of the appellant to grant insurance cover with retrospective effect from a date prior to 26.8.1988 when it received the premium. Therefore, the insurer adopted the standard, logical and obvious course of issuing the insurance policy with effect from the date on which it received the premium amount by cheque that is with effect from 26.8.1988. As the premium paid was for one year and the standard term of fire policy was one year, the policy was issued assuming risk for the period 26.8.1988 to 25.8.1989. Non-issue of the policy specifying the period of nothing illogical or

arbitrary about the insurance of a policy specifying the period of insurance cover as one year effective from the date of receipt of the premium, that is from 26.8.1988 to 25.8.1989. If the appellant wanted insurance cover prospectively it should have so specified in the proposal. Having failed to do so and having sought retrospective cover, the appellant cannot make a grievance when the insurance cover is issued retrospectively from the date of receipt of the premium.”

The substantial finding recorded in paragraph No. 9 is that the date of the policy would be effective from the date of premium is paid and the rights and obligations of the parties would be strictly governed by the policy of the Insurance and no equitable view can be taken. Whereas, in the case of National Insurance Co. Ltd. (supra) relied upon by counsel for respondent No.1, similar issue was involved though it was a case of motor accident. In the said case, the following observations have been made:-

“17. In a contract of insurance when an insurer gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a Bill of Exchange drawn on a specified banker. A Bill of Exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of

money to a certain person. It involves a promise that such money would be paid.

18. Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonored by the bank concerned the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation.

19. Under [Section 25](#) of the Contract Act an agreement made without consideration is void. [Section 65](#) of the Contract Act says that when a contract becomes void any person who has received any advantage under such contract is bound to restore it to the person from whom he received it. So, even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonored, insurer is entitled to get the money back.

20. However, if the insured makes up the premium even after the cheque was dishonored but before the date of accident it would be a different case as payment of consideration can be treated as paid in the order in which the nature of transaction required it. As such an event did not happen in this case the insurance company is legally justified in refusing to pay the amount claimed by the respondents.

The only distinguishable feature in the present case and the case cited by counsel for respondent No. 1 is that the second cheque/correct cheque was given by the insured after the

accident had occurred. Therefore, the Supreme Court held that the insurance company would not be liable whereas in the present case, after the policy was issued, respondent No. 1 did not ask for any indemnification which means that he did not take the advantage of the policy without paying the premium.

In view of the law laid down by the Supreme Court in the aforesaid two cases and the facts and circumstances of the present case, the question posed is answered in affirmative and it is held that in case where a cheque issued for part payment of premium is dishonored and subsequently, correct cheque is also issued to make up the deficiency of the premium without taking any advantage from policy issued by the insurance company then the contract would come into being from the date when the entire premium is paid.

With these observations, the present petition is hereby disposed of and the impugned order is hereby modified. Respondent No. 1 may deposit the remaining amount of ₹1,409/- returned in cash to him, if already not deposited.

10th March, 2016

Shivani Kaushik

**[Rakesh Kumar Jain]
Judge**