

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

FAO No. 8300 of 2014 (O&M)

Date of decision: 01.08.2016

Kallu and another

....Appellants

vs.

Bharti Axa General Insurance Company Ltd. and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rajesh Lamba, Advocate,
for the appellants.

AMOL RATTAN SINGH, J. (ORAL)

The only issue in this appeal, filed by the owner and driver respectively, of the tractor involved in an accident in which one Rahul was unfortunately killed and one Kalsum had received serious injuries, is as to whether it is the appellants herein who are liable to pay the compensation to the claimants (who had filed separate claim petitions), or whether it is the insurance company (respondent No. 1) that had insured the “offending vehicle”, that would be first liable to pay such compensation.

2. Learned counsel for the appellants relies upon a judgment of the Hon'ble Supreme Court in **United India Insurance Co. Ltd. vs. Laxmamma and others** 2012 (2) R.C.R. (Civil) 834, to submit that even if the policy was cancelled due to dishonouring of the cheque given towards payment of premium for the policy, after the accident took place, the insurer would still be liable to pay the claimants the compensation awarded by the Tribunal, but would be at liberty to recover the same in due course of law from the insured.

Notice of motion.

Mr. Sanjeev Goyal, Advocate, appears and accepts notice on behalf of respondent No. 1, i.e. the Bharti AXA Genereal Insurance Company Ltd.

3. Learned counsel for the insurance company submits that the Tribunal came to a positive finding that the cover note itself, bearing no. 30582003, was cancelled from the date of its inception, in view of the fact that the specific stand of the insurance company was that the cover note had simply been issued on the basis of a previous cover note bearing no. 012239, for an insurance policy valid from 21.03.2010 to 20.03.2011 and on verification by the company, the cover note bearing no. 30522003 had been found to be a fake one, i.e. it was actually issued after the accident, and was made subject to realization of the premium, vide the cheque issued in that regard, but with the cheque also having been dishonoured within 8 days of the accident, the insurance company had obviously no time to intimate cancellation of the policy before the accident.

Hence, he contended that the judgment in **Laxmammam's case** (supra) would not be applicable, as in that case the cheque had been issued on 14.04.2004, with the accident having taken place on 11.05.2004, i.e. 27 days later, (though the cheque was subsequently dishonoured and the cancellation of the policy was thereafter intimated to the insured).

He submitted that in the present case, the accident had taken place within 08 days of the date of the cheque with that date obviously also having been ante-dated, in view of the fact that the old policy actually expired on 20.03.2011. The accident having taken place on 23.03.2011, the Tribunal had obviously weighed the evidence and arrived at a conclusion that the whole

process of getting an insurance cover note issued and a cheque having been issued and thereafter, an accident having taken place within 3 days of the expiry of the old policy, all pointed to the fact that the insurance companys' contention with regard to the cover note being ante-dated and therefore, fake was a true contention and as such, the insurance company had been held not liable to pay the compensation, with only the driver and owner of the vehicle held to be so liable.

4. On this issue (issue No. 5 before the Tribunal), it was contended before the Tribunal by the present appellants, that the vehicle was duly insured on the date that the accident occurred, i.e. 23.03.2011 (the date in paragraph 4 of the Award has obviously be wrongly mentioned as 27.06.2011 whereas thereafter, it is stated to be 23.03.2011 through out the Award), and an insurance cover note had been duly issued to respondent No. 2 herein, bearing No. 30582003. It was further contended that the premium towards payment of the insurance policy, was paid vide cheque No. 208154, dated 15.03.2011, drawn on the Syndicate Bank, Wazirpur, District Gurgaon.

However, it was the insurance companys' stand that the cheque was dishonoured by the Bank without making any payment, due to insufficient funds and the cover note was, therefore, cancelled from the date of its inception and respondent No. 2 herein (Sh. Khuti, son of Jagmal) was informed of that fact.

5. Consequently, on the above contentions, the learned Tribunal held that the compensation to be paid to the claimants was only the liability of the present appellants (holding appellant No. 1 herein to be the actual owner of the vehicle who had got it released on 'Superdari' from the Court).

6. Having considered the aforesaid, as also arguments of learned counsel, in my opinion the arguments of learned counsel for respondent No. 1- insurance company deserve to be accepted, in view of the fact that undoubtedly the old policy expired on 20.03.2011, the accident took place on 23.03.2011 and the cheque purportedly dated 15.03.2011, was dishonoured after 23.03.2011 which fact was intimated to the Bank on 31.03.2011.

Obviously in such a situation, there was no time at all with the insurance company to intimate the insurer that the policy stood cancelled, in view of non-payment of cheque.

7. In this regard, the judgment of the Supreme Court in National Insurance Co. Ltd. vs. Seema Malhotra (2001) 3 SCC 151, can be cited, in which it was held as follows, in the light of Section 54 of the Indian Contract Act, 1872:-

“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.

Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured 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.”

8. The aforesaid judgment was duly noticed by their Lordships in

Laxmammass' case (supra). It is to be noticed that the ratio of the aforesaid judgment was never overruled by their Lordships in **Laxmammass' case**, which was, of course, a judgment by a co-ordinate Bench. However, in **Laxmamma** another judgment in **Oriental Insurance Co. Ltd. vs. Inderjit Kaur and others** (1998) 1 SCC 371, was also noticed, wherein the doctrine of public interest had been invoked, to hold that the insurance company was liable to indemnify third parties in respect of the liability which the policy covered, despite the bar created by Section 64-VB of the Insurance Act, 1938.

9. The said provision is reproduced hereinunder:-

“64VB. No risk to be assumed unless premium is received in advance- (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 dispatch 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.

(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer.”

Eventually, in **Laxmammammas' case** their Lordships went on to hold that unless the policy of insurance is cancelled by the insurer and intimation of such cancellation has reached the insured before the accident, the insurer would remain bound to indemnify third parties in respect of the liability that the policy covered.

10. In the present case, learned counsel for the appellants has, naturally, very largely stressed on this aspect of the issue, to submit that the law laid down would be as was held in **Laxammammas' case**.

Whereas there is no doubt that the law as was laid down in that case is obviously a binding precedent, however, it also cannot be ignored that in **Seema Malhotras' case** (supra), their Lordships while referring to Section 64-VB of the Insurance Act, had eventually held that unless the premium is paid, the insurance policy would not be a valid policy, and as such, the insurer would not be liable to indemnify the insured in respect of claims arising from any accident.

11. In the opinion of this Court, the present situation is one in which

the ratio of Seema Malhotras' case would apply to the circumstances, rather than the ratio of in law in Laxammas' case.

This is for the reason that firstly, undoubtedly the insurance company had no reaction time to cancel the policy before the accident, because the new policy started (even if the cover note were to be believed to have been validly issued and not ante-dated), at 00:00 hours of 21.03.2011, with the accident having taken place on 23.03.2011 -at about 1:00 p.m. Thus, with the accident having taken place within two and half days of the commencement of the policy (if the cover note is not held to be ante-dated), and the cheque having been dishonoured only thereafter, the insurance company possibly could not have revoked the cover note before the accident, within that much time and thus, its contention before the Tribunal, to the effect that the cover note was actually ante-dated, as submitted by learned counsel before this Court, cannot be ignored in the opinion of this Court.

Either which way, whether or not the cover note was ante-dated, most definitely the company could not have revoked the policy within 72 hours of the cover note purportedly having been issued and the accident having taken place.

12. Secondly, it must be remembered in this case that this appeal has not been filed by the claimants before the Tribunal, but by the owner and driver of the vehicle involved in the accident, who have been held liable to pay the compensation to the claimants.

Undoubtedly, the purpose behind any beneficial legislation is to ensure that the beneficiary thereof, i.e. in this case the claimants before the Tribunal, are given the benefit of the legislation with the least possible harassment. Thus, the insurance company being in a position to immediately

pay the compensation awarded by the Tribunal, it is generally to be held liable to first pay the same to the beneficiaries and if warranted, thereafter to recover the compensation paid, from the insured.

In the present case, however, it is the insured who is before this Court, simply try to postpone his liability to pay the compensation by taking a plea that it is the insurance company which first has to pay the claimants and thereafter may be able to recover the compensation paid, from him and his driver.

I see no rationale to postpone such recoveries from the appellant, i.e. the owner of the vehicle who was insured by the insurance company, with nothing shown to the contrary against the findings with regard to the cheque having been dishonoured within a few days of the accident, and the accident itself having taken place within two and half days of the purported issuance of the cover note.

13. It is seen from the grounds of the appeal that a ground has also been taken that the first appellant, (who has been made liable to pay the compensation) was only a power of attorney holder of the original owner and as such, it is the principal who would be liable.

However, firstly, no arguments at all were addressed in that regard and secondly, it is not even mentioned in the grounds of the appeal as to who the original owner was. From the memo of parties before this Court as also before the Tribunal, it is seen that Khuti, son of Jagmal and Ali Khan, also son of Jagmal and one Aamin, son of Bannu Meo, are all shown to be the owners of the tractor. Hence, which of these persons was the registered owner, or whether the tractor was in their joint ownership, and who actually executed the power of attorney in favour of first appellant, is not made clear anywhere. It is, however,

not denied that it is the first appellant who took charge of the vehicle on 'Superdari' from the Court seized of the criminal proceedings in which the tractor had been impounded. Therefore, it does seem to be that without the registration of the vehicle having actually been transferred to the first appellant herein, he had probably bought the tractor from the owner (s). However, nothing further can be said in that regard by this Court, with neither any arguments having been addressed in that regard, nor anything pointed out from the Award of the Tribunal to show that any evidence in that regard was led even before that forum.

14. Hence, in view of the fact that the insurance company had no time to react, between the date of the issuance of the cover note and the date of the accident, to cancel the policy on the ground of the cheque paid towards the insurance premium having been dishonoured (in fact after the accident), it is held that ratio of the judgment in Seema Malhotras' case would apply to the facts and circumstances of this case and not the ratio of the judgment in Laxmammas' case.

Consequently, this appeal is dismissed, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

August 01, 2016
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No