NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (C) No. 1216 of 2007

United India Insurance Company Limited, Branch Office-1, Udit Nagar, Raurkela - 12 (Orisa)

----Appellant

Versus

1. Smt. Hirmani Bai widow of Late Lalsai @ Londo Ram, aged 40 years, Caste Uraon, Occupation Housewife, R/o village Kachhar, PS Patthalgaon, District Jashpur, Chhattisgarh.
2. Preetam Minj S/o Sohan Minj, aged 52 years, Caste Uraon, Occupation Bus Driver, R/o village Sitonga, District and Tahsil Jashpur, Chhattisgarh.
3. Anup Kumar Gupta S/o A.P.Gupta, R/o village Tapkara, Tahsil Kunkuri, District Jashpur, Chhattisgarh.

----Respondents.

For Appellant/ Insurance Company : Shri Dashrath Gupta, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

Judgment on Board

03/02/2017

1. In this appeal by the Insurance Company, the sole question which has been raised is whether the Insurance Company is liable to pay compensation when the cheque is dishonoured.

2. This question is in fact no longer res integra. The law in this regard is well settled. The Apex Court in **Oriental Insurance Co. Ltd. v. Inderjit Kaur, (1998) 1 SCC 371** has held that keeping in view the provisions of Section 64-VB of the Insurance Act, an insurer could issue a policy of insurance and could make itself liable to indemnify third parties in respect of the liability which the policy of insurance would cover only after receipt of premium in advance. However, the Apex Court left open the question whether the insurer was entitled to avoid or

cancel the policy of insurance as against the insured when the cheque issued for payment of premium was dishonoured.

3. A similar matter came-up for consideration before the Apex Court in **New India Assurance Co. Ltd. v. Rula, (2000) 3 SCC 195**. In this case also, the premium had been paid by cheque and the policy was issued. After the cheque bounced, the policy of insurance was cancelled by the Insurance Company. However, in this case, the accident took place before the Insurance Company had cancelled the policy of insurance and the Apex Court relying upon Inderjit Kaur case (supra) held that the Insurance Company was liable to pay the compensation.

4. The judgment in **National Insurance Co. Ltd. v. Seema Malhotra, (2001) 3 SCC 151**, in my view, is not strictly applicable to the case in hand because it relates to claim of insured's own damages. The occurrence in this case did not involve any third party. In this context, the Apex Court held that once the cheque had been dishonoured and the insurer had sent intimation, the insurance policy stood cancelled and the Insurance Company was not liable to indemnify. This judgment is not strictly applicable because it deals with the claim of the insured himself. Once the cheque of the insured himself is bounced, obviously the Claimant cannot claim personal benefits for himself.

5. However, in respect of third parties, the position is different. The issue with regard to liability in respect of third parties was considered in **Deddappa v. Branch Manager, National Insurance Co. Ltd., (2008) 2 SCC 595**. In this case, the cheque was issued on 15.10.1997 and the policy of insurance was issued for the period from 17.10.1997 to 16.10.1998. The Bank issued a memo on 21.10.1997 disclosing that the cheque had been dishonoured. Thereafter, the Insurance Company cancelled the policy of insurance by communicating to the owner of the vehicle and intimation was sent to the concerned Regional Transport

Officer (RTO) also. On these facts, the Apex Court held that the Insurance Company would not be liable even in respect of third party risk. Reference may be made to the following observations of the Apex Court:

> "**24**. We are not oblivious of the distinction between the statutory liability of the insurance company vis-a-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim."

6.

However, the Apex Court invoking its extra-ordinary jurisdiction under Article 142 of the Constitution of India directed that the Insurance Company would pay the amount.

6. The same question came-up for consideration before the Apex Court in United India Insurance Company Limited v. Laxmamma, (2012) 5 SCC 234, and after discussing the entire law on the subject, the Apex Court summarized the legal position in the following manner:

> "**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."

7. It would be pertinent to note that in Laxmamma case (supra), the policy of insurance was cancelled only after the accident had taken place.

8. In this case, the Insurance Company did not send any notice to the insured regarding cancellation of the policy nor sent any intimation to the RTO that the policy has been cancelled, prior to the accident. Therefore, the Insurance Company cannot escape from its liability to pay the compensation. However, the Insurance Company must be given the right to recover the compensation paid by it from the owner of the vehicle. The Insurance Company may be liable towards third parties to pay the amount because the third parties are not aware about the cancellation of the policy till notice is given but the owner of the vehicle whose cheque has bounced cannot take advantage of his cheque being dishonoured. Once the cheque is dishonoured the owner will also be liable to pay the compensation amount. Therefore, though it is held that the Insurance Company is liable to pay the compensation, it is clarified that the Insurance Company shall have the right to recover the amount paid/deposited by it from the owner by filing certificate proceedings under Section 174 of the Motor Vehicles Act and it shall not be required to file a separate suit or any other proceedings for recovery of the same. The award of the Tribunal is modified to this limited extent.

9. The appeal is allowed in the aforesaid terms.

10. Send down the lower Court records forthwith.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Subbu