NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR
MA No.863 of 2005

United India Insurance Company Limited, Through : It's Divisional Manager, Divisional Office, Main Road, Korba, District Korba (Chhattisgarh).

---- Appellant

Versus

1. Ratiram Yadav S/o Hira Singh Yadav, aged about 35 years.
2. Smt.Har Kunwar W/o Ratiram Yadav, aged about 33 years.
   Both are R/o Village Dariya, P.S.Pali, District Korba, At present Near Mandir Dewarikhurd, Bilaspur, Tah. & Dist.Bilaspur (Chhattisgarh).
3. Mohd. Kalam, S/o. Shri Mohd. Hakim Ansari, Aged about 23 years, R/o. Ring Road, Ambikapur, District Surguja, Chhattisgarh.

---Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate
For Respondents	:	Shri Kishanlal Sahu on behalf of Shri Bhupinder Singh, Advocate

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Hon'ble Shri Justice P. Sam Koshy
Order on Board

20/09/2017

1. Present is an appeal preferred by the appellant-Insurance Company assailing the award dated 19/04/2005 passed by the Motor Accident Claims Tribunal, Korba, District Korba (C.G) (for short – the Tribunal) in Claim Case No.75/2004.

2. Vide the said impugned award, the Tribunal in a death case has awarded the compensation of Rs.2,63,000/- along with interest @ 9% per annum. While passing the said award, the Tribunal has fastened the liability of payment of compensation upon the appellant-Insurance Company making it jointly and severally liable for the payment of compensation.

3. Present is an appeal by the Insurance Company challenging the liability. According to the counsel for the Insurance Company, the covering note in the instant case was issued by the Insurance Company on receipt of a cheque issued by respondent No.4 – the owner of the offending vehicle. He further submits that, a cheque which was issued was subsequently got dishonoured. Pursuant to the intimation from the bank, the Insurance Company has sent an intimation to the owner i.e. respondent No.4 by registered post and the acknowledgment received back showed that the intimation by the Insurance Company was served upon the respondent No.4 and since the intimation of cancellation of policy was served upon respondent No.4-the owner, the Insurance Company cannot be fastened with the liability of payment of compensation as the policy already stood cancelled and intimation of which also duly served upon the owner of the vehicle. He relied upon the decision of Supreme Court in the case of ***Deddappa Vs.National Insurance Co.Ltd [{2008} 2 SCC 595].***

4. So far as the counsel for the respondent No.4-owner is concerned, he pointed out to a couple of decisions referred by the Tribunal while passing

the liability upon the Insurance Company and prayed that the appeal be rejected as he had no proper intimation of the policy getting cancelled.

5. Having heard the contentions put forth on either side and on perusal of record when we look into the admitted factual matrix of the case it reflects that, the cover note was issued on receipt of a cheque from the respondent No.4 for the period from 29/11/2000 to 28/11/2001. The cheque however subsequently on presentation got disonoured for insufficient funds and an intimation in this regard was received from the bank. That subsequently on 29/12/2000, the Insurance Company had sent an intimation cancelling the policy to the owner and the said intimation was served upon the owner by registered letter of which the acknowledgment was also duly received back by the Insurance Company showing the service of the notice on 01/01/2001.

6. This factual aspect is not denied or controverted by the counsel for the respondent No.1 except the fact that, there was no proper intimation upon the owner. It was only a presumption drawn on the receipt of acknowledgment of the postal department. Be that as it may, since the law so far as disonouring of the cheque is concerned is by now well settled the leading cases of which being the case of ***Deddappa Vs.National Insurance Co.Ltd*** (Supra) wherein it has been categorically held that in the event if the issuance of policy gets disonoured and if the intimation is also served upon the owner, then the liability shall not be of the Insurance Company to indemnify the owner.

7. At this juncture, it would be relevant to refer to the decision of this High Court a bunch of appeals decided on 02/09/2016 in M.A.No.931/2005 wherein it has been held by the High Court that, in the event if an intimation is send to the owner without there being an intimation in respect of cancellation of policy to the concerned R.T.O., then the principles of pay and recovery would apply and it shall be the responsibility of the Insurance Company to deposit the award and recover the same from the owner.

8. In the instant case also, this court from perusal of the evidences and the records does not find any evidence which has been brought on record by the Insurance Company with which it could be said that, the intimation by the Insurance Company has been duly send to the concerned R.T.O. In the absence of which this court is inclined to adopt the judgment passed by this High Court in M.A.No.931/2005 decided on 02/09/2016 holding that, the Insurance Company shall honour the award and shall have the liberty of recovering the same from respondent No.4-owner.

9. Thus, the appeal of Insurance Company is allowed in part and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Sumit