IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3382 OF 2015
WITH
CA/16539/2015 IN FA/3382/2015
WITH
CA/8237/2016 IN FA/3382/2015

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.LATUR
VERSUS
MUNJABA BALASAHEB @ BALURAM KAKDE AND OTHERS
...
Advocate for Appellant : Mr S G Chapalgaonkar
Advocate for Respondents : Mr B S Kudale For R/1,
Mr A S Kulkarni h/f Mr. A N Nagargoje Adv For Resp 2
...
CORAM : V.K. JADHAV, J.
Dated: February 20, 2017
...

PER COURT :-

1. Being aggrieved by the judgment and award passed by the Member, Motor accident Claims Tribunal Majalgoan dated 31.8.2015, in MACP No.17/2010, the original respondent no.3-insurer has preferred this appeal to the extent that the Tribunal has fastened the liability on the respondent insurer alongwith the owner of the vehicle jointly and severally to pay the compensation.

2. Brief facts, giving rise to the present appeal are as follows :-

a] On 19.1.2009 at about 08.30 am to 09.00 am deceased Prakash was going to his field which is adjacent to Telgaon-Majalgaon Road near Talewadi S.T.Bus Stop. At that time, one truck loaded with sugarcane proceeding towards Majalgaon gave dash to the deceased Prakash. In consequence of which deceased Prakash died on the spot. However, the driver of the said truck did not stop the truck and fled away from the spot alongwith his truck. However, after the accident, two persons chased said truck on motor cycle and registration number of the said truck was noted. Even on the basis of the report, concerned police station has also registered a crime against the driver of the said truck.

b] Legal representatives of deceased Prakash preferred MACP No.17/2010 for grant of compensation under various heads. It has contended in the claim petition that, deceased Prakash was earning Rs.6,000/- p.m. by working as a sugar cane cutter and also by doing tailoring work. He died at the age of 23 years.

c] Respondent no.1 owner has strongly resisted the application by filing written statement at exh.31. He has accepted that he is owner of the truck and appellant is insurer of the truck involved in the accident. It has contended that the claimants have filed false and bogus claim to garb the compensation. It has contended that at the time of accident, respondent driver of the truck was driving his vehicle in a moderate speed and from the left correct side of the road. At that time one another truck was kept stationary on the said road facing towards Telgaon. Aall of sudden, one person came from the backside of the said stationary vehicle in the front side of truck and he himself given dash to the offending truck and fell down on the road by his own negligence. It has contended that, accident occurred on account of negligence of the deceased and also on account of the negligence of the driver of the said stationary vehicle.

d] The appellant insurer has resisted the claim by filing written statement at exh.16. It has contended that vehicle owned by respondent no.1 involved in the accident is not covered under the policy issued at the material time. It has contended that the cheque issued by respondent no.1 towards premium of the said policy has been returned unpaid for insufficient balance and thus premium amount was not received by the appellant insurer. Appellant has given notice to respondent no.1 as well as RTO Beed to the effect. It has therefore contended that the appellant insurer is not required to indemnify respondent no.1 and not liable to pay any compensation. It has also contended that as cheque given by respondent owner got dishonored, respondent no.1 owner thereafter obtained a subsequent policy by issuing a separate cheque which does not cover the date of accident. Said policy is valid from 29.1.2009 to 28.1.2010. It has contended that, since the policy was obtained by the owner in respect of the same vehicle, he was aware that the cheque given by him earlier was dishonored It has also contended that driver of the said vehicle was not holding valid and effective driving licence at the time of accident.

e] Both the parties led their oral and documentary evidence in support of their rival contentions. The learned Member of the Tribunal by its impugned judgment and award dated 31.8.2015 allowed the claim petition with costs against the respondent and appellant by directing them to pay jointly and severally a total compensation of Rs.4,39,000/- including no Fault liability alongwith interest @ 6% p.a. from the date of application till realization of entire amount. Hence, this appeal.

3. Learned counsel for the appellant submits that initially cheque of Rs.13,860/- given by respondent no.1 towards policy premium of the vehicle truck bearing registration No.MH-13/G-2100 was dishonored on 15.1.2009. As such, policy issued for a period of 5.12.2008 to 4.12.2009 was cancelled on 15.1.2009. Learned counsel submits that, intimation regarding cancellation of the policy was given to owner respondent no.1. On receipt of the said intimation, respondent owner had given a fresh demand draft of said amount on 19.1.2009 and accordingly a fresh policy covering a

period of 29.1.2009 to 28.1.2010 was issued to him. Learned counsel submits that, the accident had taken place on 19.1.2009 and therefore, vehicle involved in the accident was not validly insured with the appellant insurer. Learned counsel submits that, the appellant insurer has examined in all two witnesses. DW 1 Mr. Dhanesh Kilkarni officer in the office of insurer and DW 2 Satish Pokale is bank employee, who was examined on the point of dishonor of cheque. In addition to this, the appellant has also produced original cheque exh.72, memorandum of Mahatma Phule Urban Cooperative Bank Ltd., Patoda in respect of dishonour of said cheque Exh.88. Copy of the insurance policy exh.75, 76, 77 respectively. Receipt issued by the respondent owner at exh.78 and copy of customer ledger for saving account at exh.87 and one receipt at exh.78 is of subsequent premium in respect of the said premium. Learned counsel submits that, ignoring all this evidence, the learned Member of the Tribunal Majalgaon fastened the liability on the appellant alongiwth owner by directing them to pay the compensation jointly and severally to the claimants on the ground that the appellant insurer has failed to prove that intimation about cancellation of the policy was given to respondent owner prior to the accident. Learned counsel submits that, the conduct of the respondent owner is self speaking and after receiving said intimation, respondent owner has approached again to the appellant insurer for obtaining the policy of the said vehicle. Further conduct of the respondent owner is also objectionable that after happening of the accident respondent owner approached to the insurance company on 19.1.2009 for obtaining the policy of insurance in respect of the same vehicle by suppressing the fact that on the very day said vehicle involved in the accident.

4. Learned counsel for respondent no.1 claimant submits that, the appellant insurer has not given intimation in advance about dishonour of the cheque as well cancellation of the policy on account of the same. The appellant insurer cannot be allowed to contend that the respondent owner was not holding a valid policy as on the date of accident. The learned counsel in order to substantiate his contentions placed his reliance on a

case of National Insurance Company Ltd., Vs. Balkar Ram and others reported in 2013 (5) ALL MR 923 (S.C). Learned counsel in the alternate submits that in view of the subsequent conduct of respondent owner if this court is inclined to draw inference that intimation about cancellation of policy was given to respondent owner, then, in the instant case, deceased Prakash who is third party met with an accidental death out of the use and involvement of the vehicle truck. The claimant LRS of deceased Prakash is not responsible for dishonour of the cheque as well as of the cancellation of the policy in any manner. Thus, in the given set of facts, it would be just and proper that if the appellant insurer is directed to pay the entire compensation under the award and to recover the same from the respondent owner.

5. Learned counsel for respondent no.2 owner of the vehicle involved in the accident submits that intimation about cancellation of the policy was never given to respondent owner by the appellant. In absence of any intimation for terminating the contract of insurance served on the respondent owner, the learned Member of

the Tribunal has rightly held that the appellant insurer is liable to pay the amount of compensation alongwith the owner jointly and severally inspite of non payment of premium on account of dishonour of cheque. The appellant insurer is bound to indemnify third party even if certificate of insurance or insurance policy has been cancelled. Learned counsel submits that, on 19.1.2009 respondent owner had approached the appellant insurer to obtain copy of the policy. Intimation of the cancellation of the policy was not given to him. Only on the basis of the same, no inference could be drawn that, the intimation about cancellation of the policy was given in advance to the respondent owner and therefore, he had approached the appellant insurer again for obtaining the insurance in respect of the same vehicle.

6. Learned counsel in order to substantiate his case, placed reliance on Oriental Insurance Co and ors Vs. Vinod Kumar and ors And National Insurance Co Ltd., Vs. Shri Ashok Kumar and others reported in 2007 (96) DRJ 483, United India Insurance Company Ltd. Vs. Laxmamma and others reported in AIR 2012 SC 2817.

7. In the instant case, though there is no direct evidence about the intimation of such cancellation has reached before the accident, inference about the same could be drawn in the present set of facts and circumstances of the case. Initially cheque of Rs.13,860/- issued by respondent owner towards premium for the insurance policy of the vehicle truck bearing registration no.MH-13/G-2100 was dishonored on 15.1.2009. Accident had taken place on 19.1.2009. According to respondent owner, no intimation was given to him prior to accident about the cancellation of the policy, however, on 19.1.2009 respondent owner had approached the appellant insurer with a fresh demand draft of premium amount as well as an amount of Rs.250/- towards the charges of dishonour of cheque for obtaining a fresh policy in respect of the same vehicle. Respondent owner since approached the appellant insurer with a demand draft of the amount of the premium as well as dishonour of charges of the earlier cheque unmistakenly point out that intimation about cancellation of the earlier policy was given to him and that was the reason he approached again to the

appellant insurer for obtaining fresh policy. It is also a part of record that a policy covering period of 29.1.2009 to 28.1.2010 was also again issued to him.

8. In a case of United India Insurance Co. Ltd., Vs. Laxamma reported in AIR 2012 SC page 2817 relied upon by the learned counsel for respondent owner, in paragraph no.19 of the judgment, the Supreme Court has made following observations :-

> *19. In our view, the legal position is this : where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonored, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1)of the M.V. Act unless the policy of insurance is cancelled by the authorized 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 authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored 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.*

9. In the aforesaid case, the Supreme Court held that liability of authorized insurer to indemnify third party in respect of the liability which that policy covered subsists unless policy of the insurance is cancelled by the

authorized insurer and intimation of such cancellation has reached the insured before the accident. The Supreme Court has further observed that where the policy of the insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and cheque gets dishonored 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 the awards of compensation in respect thereof.

10. The appellant insurer can discharge burden of proving about intimation given to respondent owner by adducing oral and documentary evidence or by relying upon the evidence, cross examination and conduct of the other side. In the instant case, conduct of the respondent owner approaching the appellant insurance company on 19.1.2009 with a demand draft not only covering the amount of the insurance premium but also

the amount towards charges of earlier dishonor of the cheque unmistakenly point out that respondent owner had an intimation about the cancellation of the policy.

11. In view of the above discussion and in the given set of facts, in my opinion appellant insurer has discharged the burden and in view of the observations made by the Supreme Court as aforesaid, the appellant insurer is not liable to satisfy the award. However, in paragraph no.21 of the Judgment, the Supreme Court though declined to interfere in the judgment of the High Court, further placed the insurer at liberty to prosecute its remedy to recover the amount paid to the claimants from the insurer. In the case cited above, the accident occurred on May 11, 2004 and earlier insurance policy covers the period 16.4.2004 to 15.4.2005. Though, accident had taken place on 11.5.2004, the insurer cancelled the insurance policy by communication dated 13.5.2004 on ground of dishonor of cheque. Cancellation of policy having been done by the insurer after the accident, the Supreme Court held that insurer became liable to satisfy the award of compensation

passed in favour of the claimants and then recover the amount payable to the claimant from the insured. However, in a case Oriental Insurance Company Ltd., Vs. Inderjit Kaur and others reported in AIR 1998 SC 588 the Supreme Court invoked doctrine of public interest and held that insurance company was liable to indemnify third parties in respect of the liability which the policy covered despite bar created by Section 64-VB of the Insurance Act.

12. In view of the above discussion, in the instant case, it would be just and appropriate if the appellant insurer is directed to pay the compensation and then recover the same from the respondent owner. Hence, I proceed to pass the following order.

O R D E R

I. First appeal is hereby partly allowed. No costs.

ii. The Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Majalgaon, dated 31.8.2015 in MACP No.17/2010 is hereby quashed and set aside to the extent that, the appellant insurer is held jointly and severally liable to pay the compensation of

Rs.4,39,000/- (Rs. Four lacs thirty nine thousand only) alongwith interest @ 6% p.a. from the date of petition till realization of the entire amount alongwith respondents no.1 and 2 and instead of that the judgment and Award passed by the Member, Motor Accident Claims Tribunal, Majalgaon dated 31.8.2015 in MACP No.17/2010 is modified in the following manner :-

a] The respondent nos. 1 and 2 do pay jointly and severally total compensation of Rs.4,39,000/-(Rs. Four lacs thirty nine thousand only) (including no fault liability) alongwith interest @ 6% p.a from the date of petition till its realization. However, respondent No.3 Bajaj Alianz General Insurance Company Limited shall pay the entire amount of Rs.4,39,000/-(Rs. Four lacs Thirty Nine thousand) alongwith interest from the date of application till realization of the entire amount to the claimant and respondent no. 4 and recover the same from respondent no.1-owner Babasaheb Dadarao Bangar.

III. Needless to say that to recover said amount, Respondent No.3 Insurer need not initiate any independent proceeding.

iv. Rest of the Judgment to the extent of quantum stands confirmed.

v. Award be drawn up as per the above modifications.

vi. First Appeal accordingly disposed of.

Vii. Respondent no.4 and Claimant are permitted to withdraw the amount of compensation deposited by the appellant insurer before this Court as per the share determined by the Tribunal.

Viii. Pending Civil Applications stand disposed of.

sd/-

(V.K. JADHAV, J.)

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