IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 24 OF 2016

NATIONAL INSURANCE CO. LTD.
THROUGH ITS DIVISIONA OFFICER ... Appellant

Versus

SHRI. PRAKASH SHANKAR NAIK & 5 ORS. ... Respondent

Ms. Y. Mandrekar, Advocate for the Appellant.

Shri S.S. Kakodkar, Advocate for Respondent Nos.1 & 2.

Coram:- C. V. BHADANG, J.

Date:- 5th June, 2017

ORAL ORDER :

The appellant - Insurance Company is challenging the judgment and award dated 6/11/2015 passed by the Motor Accident Claims Tribunal at Margao ('Tribunal' for short) in Claim Petition No.193/2008. By the impugned judgment and award a compensation of Rs.4,25,000/- alongwith interest at the rate of 9% p.a. has been granted to the respondent nos.1 & 2 in respect of death of their child aged 9 years. The compensation is apportioned as 75:25%. The 75% of the compensation is payable by the owner and insurer of a Swaraj Mazda vehicle bearing registration no.GA-01-W-6281 while 25% is payable by the owner and insurer of a minibus bearing no.GA-02-T-4743. The appellant is the insurer of the Swaraj Mazda vehicle. The learned Tribunal by the impugned judgment and award has directed the appellant (respondent no.2 before the Tribunal) to satisfy the award subject to a right of recovery from the owner.

2. I have heard the learned Counsel for the appellant and the learned Counsel for the first and the second respondent and perused records.

3. The only contention raised on behalf of the appellant is that there was no valid policy of insurance as on the date of the accident, inasmuch as the cheque issued towards the premium of the policy was dishonoured and an intimation of cancellation of the policy was issued to the registered owner. It is submitted by the learned Counsel for the appellant that in such a case the learned Tribunal could not have fastened liability on the appellant.

4. On the contrary, it is submitted by the learned Counsel for the first and the second respondent that there are several judgments of the Hon'ble Supreme Court holding that in such a case the Insurance Company cannot abdicate its liability towards a third party. It is submitted that the matter is essentially between the insurer and the

insured and the rights of the third party cannot be adversely affected. The learned Counsel points out that the accident had occurred prior to the intimation of cancellation issued by the appellant. He further points out that in this case not only a cover note but a regular policy was issued.

5. I have carefully considered the rival circumstances and the submissions made and I do not find that a case for interference is made out. The Tribunal has framed the relevant issue no.5 on the liability of the insurance company in the context of the cheque issued towards premium being dishonoured. The learned Tribunal has answered issue no.5 in the negative. The relevant reasoning can be found in paras 99 to 102 of the impugned judgment. In the earlier part of the judgment the Tribunal has referred to various decisions namely in the case of ***Oriental Insurance Co. Ltd. V/s. Inderjit Kaur & Ors. 1998 (1) T.A.C. 615 (SC), New India Assurance Co. Ltd. V/s. Rula & Others (2000) 3 SCC 195, National Insurance Co. Ltd. V/s. Abhaysing Pratapsing Waghela & Ors. 2009 (1) T.A.C. 10 (SC)*** and ***National Insurance Co. Ltd. V/s. Balkar Ram & Ors. 2013 (5) ALL MR 923 (S.C.)*** in which in the similar circumstances where the cheque issued towards the insurance premium was dishonoured, it has been held that it would not exonerate the insurer from making a payment of compensation in so far as third party is

concerned. Lastly, the learned Tribunal has relied upon the decision of this Court in the case of ***Eknath Shantaram Kunkolienkar & Anr. V/s. Anthony Fernandes & Anr. (First Appeal No.94/2005)*** and ***United India Insurance Co. Ltd. V/s. Sindhubai Kondiram Darwante & Ors. 2010 (4) Bom.C.R. 325*** in order to hold that the appropriate course would be to direct the payment of the amount subject to right of recovery from the owner.

6. In the case of ***Rula*** (supra), the Hon'ble Apex Court after considering its earlier decision in the case of ***Inderjit Kaur*** (supra) had inter alia held that the insurer's liability against third party, would remain unaffected, in such a case. In the present case, it is not in dispute that the accident in question had occurred on 24/06/2008 and the intimation of cancellation was given subsequent to that. In such circumstances, in my considered view, the ratio laid down in the case of ***New India Assurance Co. Ltd. V/s. Rula*** (supra) would squarely apply to the facts of the present case. Thus, the ground of challenge as raised by the appellant to my mind cannot be accepted. No other ground is urged. The appeal is accordingly dismissed. The amount deposited by the appellant along with interest, if any, shall be paid to the respondent nos.1 & 2 as directed by the Tribunal. In the circumstances, there shall be no order as to costs.

Needless to mention that the appellants shall be entitled to recover the amount from the insured.

C. V. BHADANG, J.

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