IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 474 OF 2017
IN
FIRST APPEAL (ST) NO. 26271 OF 2016

Smt.Swati Dilip Pachadkar & Ors. ...Applicants

In the matter between

Reliance General Insurance Co.Ltd. ...Appellant
Vs.
Smt.Swati Dilip Pachadkar & Ors. ...Respondents

Ms.Shalini Shankar for Applicant.
Mr.Nilesh Bhutekar for Respondents.

CORAM : S.C. GUPTE, J.

25 APRIL 2017

P.C. :

Heard learned Counsel for the parties.

2 This first appeal challenges an order passed by MACT, Raigad in an accident claim petition awarding compensation of Rs.15,40,000/- to Respondent Nos.1 to 5 (original claimants), who are heirs of the deceased accident victim. The deceased, Dilip Pachadkar, was driving his jeep from Mumbai to Mangaon. At about 4.15 a.m., when he reached near village Vighavali, he stopped the jeep by the side of the road. At that time, the luxury bus insured by the Appellant insurer (original Respondent No.2 to the claim petition) hit him from behind resulting into his death on the spot. At the time of the accident, the deceased was 35 years old. He was doing the business of preparing cushions and was said to be earning an income of

about Rs.10,000/- per month. The Applicants, who are legal heirs and who have no source of income, claimed compensation before MACT, Raigad in a motor accident claim petition.

3 The trial court found the accident, including its cause, to be proved. It came to the conclusion that the driver of the insured luxury bus had driven it in a rash and negligent manner and was responsible for the accident. The trial court held that the claimants were entitled to compensation in the sum of Rs.15,40,000/- together with interest. The Applicants examined Applicant No.1 and also relied on documents, including the FIR and inquest panchanama. Respondent No.1, the owner of the insured vehicle, did not adduce any evidence. Respondent No.2 (the Appellant herein) examined one witness. The main contention before the trial court was that the cheque given by Respondent No.1 towards the premium of the policy had been dishonoured; that the deceased was standing on the road without giving any signal and that, therefore, there was contributory negligence on his part; that the deceased did not have any licence; and that he was carrying passengers for hire or reward, despite the jeep not being a tourist vehicle, thus committing breach of terms and conditions of the policy. The trial court after considering the evidence led by the parties held the accident leading to the death of the deceased victim to have been caused by rash and negligent driving of the insured vehicle. The trial court ruled against any contributory negligence or breach on the part of the victim. It also did not accept the Appellant insurer's case on invalidity of the insurance policy on account of dishonour of the premium cheque.

4 Learned Counsel for the Appellant submits that there was

evidence placed before the trial court that the cheque issued by the insured (original Respondent No.1) towards premium of the policy was dishonoured and as such, the policy was not in existence and the insurer is, accordingly, not liable to pay any compensation.

5 The submission has no merit. As held by the Supreme Court in the case of **Oriental Insurance Co. Ltd. vs. Inderjit Kaur**[1]**,** once a policy of insurance is issued by the insurer, even if such policy be without receiving any premium therefor, the insurer is liable to indemnify the third parties, who act on the policy and who claim on the basis of the liability covered by the policy. As held by the Supreme Court, the policy amounts to a representation to all authorities and third parties, who are entitled to act on the policy and the insurer is not absolved of his obligations to third parties under the policy on account of non-receipt of premium. If the premium is not received, the insurer may have the right to cancel the policy. There is, however, no case here that the insurer had cancelled the policy. It cannot be suggested that simply because of dishonour of the cheque representing the payment of premium, the insurance policy could be said to be non-existent.

6 Learned Counsel for the Appellant submits the evidence placed before the trial court in the form of return of cheque advice addressed by the Appellant's banker clearly established such non-payment. The order does not indicate that any such evidence was actually placed before the trial court. Be that as it may, even if such evidence were placed before the court, it was neither here nor there. As I have already noted above, even if the Appellant insurer's case that the cheque issued towards premium of the

1 **1997 DGLS (SC) 1573**

policy was dishonoured is accepted in toto, that does not amount to *ipso facto* cancellation of the policy or discharge of the insurer from his liability to third parties to act on such policy.

7 Learned Counsel for the Appellant further submits that there is no record placed before the trial court in support of the Applicants' case that the income of the deceased was Rs.10,000/- per month. There is evidence to show that the deceased was a skilled worker, who did the work of making cushions. The income of Rs.6000/- per month assessed by the trial court is on the basis of notional income. On the basis of such notional income, considering the age of the deceased and applying a suitable multiplier as also taking into account future additions to income, and making an appropriate deduction towards expenses of the family, the compensation of Rs.12,15,000/- is worked out by the trial court towards loss of income. Adding to it, loss of consortium, of love and affection, and of estate, and funeral expenses, total compensation of Rs.15,40,000/- has been determined by the trial court. This working cannot be said to be vitiated by any error of law or assessment of evidence. The compensation worked out is very much fair and reasonable.

8 Accordingly, there is no merit in the first appeal. The first appeal is dismissed. No order as to costs.

9 In view of the dismissal of the first appeal, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)