

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-3302-2016 (O&M)

Date of decision: 08.12.2017

SBI General Insurance Company Ltd.

.... Appellant

Versus

Jahul Ansari and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.H.P.S.Ghuman, Advocate
for the appellant.

Mr. Sandeep Jasuja, Advocate
for respondent No.1.

Mr.B.K.Bagri, Advocate
for respondent No.3.

Avneesh Jhingan, J.

The present appeal has been filed against the award dated 31.03.2016 passed by Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as the 'Tribunal').

The present appeal has been filed by the Insurance Company being aggrieved of the award on the ground that the Insurance Company has been held liable to pay the compensation inspite of the fact that the policy was cancelled much prior to the date of accident.

On 13.08.2014, Jahul Ansari was going on his motorcycle bearing registration No.HR-51-AM-3980. He was struck by rashly and negligently driven truck/trolla bearing registration No.HR-47A/5006 (for

short, 'the offending vehicle"). As a result of the accident, he suffered multiple injuries. FIR No.508 was registered.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed.

The Tribunal awarded a sum of Rs.1,32,200/- along with interest @ 7.5% per annum.

It was held in the award that Insurance Company is not liable but they will pay the amount at the first instance to the claimant and thereafter would have liberty to recover the same from respondents No.1 and 2.

I have heard the learned counsel for the parties and perused the paperbook.

Learned counsel for the appellant has argued that the insurance policy was issued on 04.12.2013 and the cheque for a sum of Rs.29,218/- was issued by the owner against Cover Note/Policy No.1420638. The said cheque was dishonoured on 12.12.2013 for "insufficient funds".

Respondent No.3-Insurance Company cancelled the insurance policy and intimated the RTO Office, Financer Bank and owner of vehicle No.HR-47A/5006 through registered AD dated 13.12.2013. His grievance is that the accident took place on 13.08.2014 i.e. almost eight months after the cancellation of the policy, in such circumstances, Insurance Company could not have been directed to pay compensation and then to recover the same.

Learned counsel for the respondent-owner of the vehicle states that he was not intimated about the cancellation of the policy.

Learned counsel for the claimant argued that the third party had to be satisfied, once the policy was issued.

The contention raised by learned counsel for the appellant has substance. Present is a case where there is a time gap of eight months between the cancellation of policy and the accident. It may be noted that cheque was dated 04.12.2013 and the same was dishonoured on 12.12.2013 for “insufficient funds”. It was a specific stand of the Insurance Company before the Tribunal that after the cheque was dishonoured, the policy was cancelled and due intimation was given to RTO Office, Financer Bank and to owner of vehicle. The owner of the vehicle was proceeded exparte before the Tribunal. He had not filed any appeal against the said award. The Insurance Company had exhibited the dishonoured cheque as Ex.RW1/1, return memo report as Ex.RW1/3, notice given to respondent No.2-owner before the Tribunal as Ex.RW1/4, postal receipt as Ex.RW1/5. The said exhibits and the evidence produced by the Insurance Company were not rebutted before the Tribunal. There is another angle to the said controversy i.e. nobody has challenged the liability of the owner of the vehicle to pay the compensation.

The only pinpointed issue arising in the present appeal is that whether in the facts and circumstances of the case, the Tribunal should have ordered the Insurance Company to pay the compensation first and then have the recovery rights.

In the present case, in absence of any challenge to the award by owner and driver of the vehicle, there is no dispute on the facts that the

cheque was dishonoured, the policy was cancelled after notice and intimation of the cancellation was given to RTO Office, Financer Bank and to owner of vehicle.

Though, learned counsel for the owner of the vehicle has raised the argument that he was not intimated, his plea cannot be accepted as he has never raised this issue by filing appeal. He was proceeded exparte before the Tribunal. He has shown no grievance against the award and has not challenged the same.

The contention raised by learned counsel for the claimant that the third party rights should be safeguarded, has no merits. It would have been different case where the policy was valid on the date of accident and for any of the defences available to the Insurance Company, the Company was exonerated. In such cases, the law is that the third party should not be made to run from pillar to post and the Insurance Company should indemnify the third party and recover from the insured. In the present case, admittedly there was no policy in existence at the time of the accident. The onus was upon the Insurance Company to show the policy was cancelled prior to the accident and said cancellation was conveyed, the company has duly discharged their onus.

The Hon'ble Apex Court in case of **United India Insurance Co.Ltd. vs. Laxmamma and others, 2012(5) SCC, 234** has held as under :-

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 dishonoured, 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.

The Hon'ble Apex Court in case of **Deddappa and others vs. The Branch Manager, National Insurance Co. Ltd., 2008 (2) SCC 595** has held as under :-

20. The ratio of the said decision was, however,

noticed by this Court in New India Assurance Co. Ltd. vs. Rula and ors., (2000) 3 SCC 195. It was held that ordinarily a liability under the contract of insurance would arise only on payment of premium, if such payment was made a condition precedent for taking effect of the insurance policy but such a condition which is intended for the benefit of the insurer can be waived by it.

It was opined:-

"...If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party".

The dicta laid down therein clarifies that if on the date of accident the policy subsists, then only the third party would be entitled to avail the benefit thereof.

x x x x x

26. 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.”

In the above decisions, the Hon'ble Apex Court has held that the Insurance Company would be liable to indemnify the third party only in case the policy subsists on the date of accident. It has been held that if the policy has been cancelled prior to date of the accident and the information has been conveyed to the concerned party, then the Insurance Company will not be liable to pay.

The appeal of the Insurance Company is allowed and award dated 31.03.2016 is modified only to the extent that respondents No.1 and 2 (in the claim petition) would be liable to pay the compensation amount to the claimant.

(AVNEESH JHINGAN)
JUDGE

08.12.2017
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1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes