IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No.7269 of 2017 (O&M)
Date of decision: 02.12.2017

Kuldeep **....Appellant**

V/S

Ishwar Singh & ors. **......Respondents**

(2) FAO No.7271 of 2017 (O&M)

Kuldeep **....Appellant**

V/S

Ishwar Singh & ors. **......Respondents**

(3) FAO No.7281 of 2017 (O&M)

Kuldeep **....Appellant**

V/S

Ishwar Singh & ors. **......Respondents**

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present : Mr. Raman Chawla, Advocate for the appellant.

None for respondent No.1.

Mr. Padamkant Dwivedi, Advocate for respondent No.2.

Service of Pawan Kumar-respondent No.5 is dispensed with vide order dated 1.12.2017.

None for remaining respondents.

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B.S. WALIA, J. (Oral)

1. This order shall dispose of FAO Nos.7269, 7271 and 7281 of 2017 since the same arise out of a common award passed by the learned Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal').

2. On 10.11.2017, while taking note of the submissions of learned counsel for the appellant that the matter in issue was squarely covered by the decision of the Hon'ble Supreme Court in **National Insurance Company Vs. Balkar Ram and others 2013 ACJ 2416** wherein it had been held that the

Insurance company was liable to satisfy the award if intimation regarding dishonor of cheque and cancellation of policy was communicated to the policy holder after the date of accident, notice of motion was issued for final disposal. However, despite service having been effected, none was present on behalf of the Insurance Company on said date or for that matter on 01.12.2017 nor for that matter today also. Accordingly, I find no reason to adjourn the case any further. Accordingly, respondent-Insurance Company is proceeded ex parte.

3. Brief facts of the case leading to the filing of the instant appeals are that Policy Ex.R1 was issued on 6.6.2014 on payment of premium by the registered owner of the vehicle vide cheque Ex.R-1 whereafter accident involving the insured vehicle took place on 9.6.2014. However, on presentation, cheque issued to the Insurance Company was dishonoured by the bank concerned. Thereafter, vide letter dated 4.7.2014 i.e Ex.R-3, the Insurance Company cancelled the Insurance Policy dated 6.6.2014 (Ex.R-4) and gave intimation of the cancellation of the Policy to the registered owner of the vehicle. Learned counsel for the appellant has produced copy of Ex.R-3 i.e. Letter dated 4.7.2014. Perusal thereof reveals that on dishonour of cheque dated 5.6.2014, the Insurance Company informed the registered owner of the vehicle that due to dishonour of cheque and non receipt of premium, it was unable to provide insurance cover to the vehicle as doing so would be contrary to the regulations of the Insurance Act, therefore, it was giving notice that the Cover Note/Policy issued to him was void from the very beginning and his vehicle remained uninsured and that the Insurance Company would not be liable to pay any loss/damage to the vehicle nor be liable to any third party for loss incurred during the period in question.

4. Contents of Ex.R-3 are reproduced hereunder:

"Cancellation due to cheque bounced

INDERJIT SINGH
25 GALINO1MAHIPALPUR
NEW DELHI-110070
NEW DELHI

Date: 04/07/14

Dear Sir/Madam

Ref: Insurance cover on vehicle No./EngineNo./Chassis No:DL01LE3998 /884978 / 811702
Subject: Dishonour of cheque No. 683353 dated : 05/06/2014

Your cheque No. 683353 dated 05/06/14 drawn on STATE BANK OF INDIA Bank towards insurance cover of your DL01LE3998 / 884978 / 811702 has been dishonored for the following reason:

Dishonour reason : Insufficient Funds

Due to the above dishonour and non-receipt of premium we are unable to provide insurance cover to your above vehicle as doing so is contrary to regulations of the Insurance Act. Accordingly, we are giving notice to you that the cover note/policy issued to you is void from the very beginning and your vehicle remains uninsured.

Please note that we will not be liable for any loss/damage to the vehicle or liability to any third party that you may have incurred during this period.

If you wish to avail a fresh insurance cover for your above vehicle, please arrange to make it available for inspection by prior appointment and by remitting the requisite premium of Rs. 19630/- along with cheque bounce charges of Rs. 150/- by payorder/demand draft or cash at our nearest office. However, please note that this insurance will not be retrospective for the earlier period. If you need any further assistance in regard to the location of our nearest office, you may contact our helpline Nos. mentioned in our letter.

In the interim, please return the original covernote /policy certificate No. 11647369 to us immediately. Please note that driving/using an uninsured vehicle is an offence under the Motor Vehicle Act.

Thanking Your,
Yours faithfully,

For, Bharti AXA General Insurance Co. Ltd.

Authorized signatory.

CC to:
The Regional Transport Officer,
N W Delhi NORTH-WEST DISTRICT-II: Rohini
N W Delhi NORTH-WEST DISTRICT-II: RohiniDelhi
NEWDELHI
NEWDELHI-110070

The Policy No. 11647369 issued in favour of INDERJIT SINGH, mentioned above, stands void from inception i.e. 20140606 and we are not on risk."

5. The Tribunal, rejected the contention that the Insurance company having issued a policy i.e. Exibit R-4 dated 6.6.2014, its obligation to indemnify the insured could not be repudiated on the ground of dishonour of cheque towards payment of premium as the communication of cancellation of the insurance policy was given after the accident took place. Learned counsel for the appellant contended that the Insurance Company had only placed on record letter dated 4.7.2014 as Exhibit R-3 containing intimation of cancellation of the policy but in cross-examination, the witness appearing on behalf of the Insurance company, who had produced Exhibit R-3, could not produce any receipt with regard to the same having been served on the registered owner/subsequent purchaser.

6. Learned Tribunal, in the light of Section 25 of the Contract Act held that an agreement without consideration was void ab initio and further that in terms of Section 65 of the Contract Act, when any contract becomes void then the person who had received any advantage under such contract, was bound to restore a benefit received thereunder to the person from whom he had received the benefit. The Tribunal in holding as above relied upon the decision of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Seema Malhotra 2001(2) RCR (Civil) 456 as well as National Insurance Company Vs. Yellamma and another, 2008 ACJ 1906** as also the provisions of Section 64(v)(b) of the

Insurance Act which lay down that before a contract of Insurance comes into being, premium should be received by the insurer in advance and on the basis thereof, held that the Insurance Company was not liable to pay compensation to the appellant as the Insurance Policy Exhibit R-4 had been cancelled for non-payment of premium. While doing so, the learned Tribunal while taking into account that the policy was of 6.6.2014, accident had taken place on 9.6.2014 and Insurance Policy had been cancelled on 27.6.2014, ordered the Insurance company to pay compensation to the claimants with liberty to recover the same from the owner of the vehicle.

7. Learned counsel for the appellant contended that in **Seema Malhotra's case** (supra), the Hon'ble Supreme Court held that when the insured failed to pay the premium promised, or when the cheque issued by him towards the premium was returned dishonoured by the bank, the insurer need not perform his part of the promise as under Section 25 of the Contract Act, an Agreement made without consideration was void. Besides, as per Section 65 of the Contract Act, when a contract becomes void any person who had received any advantage under such contract was bound to restore it to the person from whom he had received the benefit, but if the insured made up the premium even after the cheque was dishonored but before the date of the accident, it would be a different matter. Learned counsel states that the decision of the Hon'ble Supreme Court in **Seema Malhotra's case** (supra) was considered by the Hon'ble Supreme court in **United India Insurance Co.Ltd. Versus Laxmamma & ors.(2012) 5 SCC 234** wherein it was held that where the policy of insurance is issued by an authorised insurer on receipt of cheque towards payment of premium and such cheque is returned dishonored, the liability of authorized insurer to indemnify third party in respect of

the liability which that policy covered subsists and the Insurance Company has to satisfy the award by virtue of the provisions of Sections 147 (5) and 149 (1) of the Motor Vehicles Act, 1988 unless, the policy of insurance was cancelled by the authorized insurer and intimation of such cancellation reached the insured before the accident. Relevant extract of the decision in **Laxmamma's** case (supra) is reproduced 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."*

8. Learned counsel further contends that the decision of the Hon'ble Supreme Court in **Yellamma's case** (supra) which was referred to, by the learned Tribunal has no applicability in the facts and circumstances of the case since the said case was one where the Insurance policy had been cancelled on dishonor of

the cheque issued by a third person i.e. other than the insured and intimation given of the cancellation of the policy prior to the occurrence of the accident besides the original cover note had also been received back by the Insurance company. Learned counsel further contended that Section 64 (v)(b) of the Insurance Act also did not stand in the way of the appellant for the simple reason that the risk had been assumed and the premium payable had been received by the Insurance Company in the manner acceptable to it. It was a different matter that the cheque had bounced. However, no intimation was given of the same to the policyholder.

9. Learned counsel further refers to paragraph No.8 of the decision in **Yellamma's** case (supra) to contend that the Hon'ble Supreme Court in the said decision has taken note of the statutory liability of the Insurance Company vis-a-vis a third party in terms of Sections 147 and 149 of the Motor Vehicles Act, 1988 though observing that if the contract of Insurance had been cancelled and all concerned intimated thereabout, then in that situation, the Insurance company would not be liable to satisfy the claim.

10. Learned counsel contended that the decision in **Seema Malhotra's** case (supra) was considered by the Hon'ble Supreme Court in **Laxmamma's** case (supra) and decision in **Laxmamma's** case was relied upon by Hon'ble Supreme Court in **Balkar Ram's** case (supra) to hold that the Insurance company was liable to satisfy the award if intimation regarding dishonour of the cheque and cancellation of the policy was communicated to the policy-holder after the date of accident.

11. Hon'ble Supreme Court in **Balkar Ram's** case (supra) took into account that cover note for the policy of insurance was issued on 7.4.2004 for

which a cheque was submitted by the owner but the same was dishonored on 17.4.2000 whereafter the insured vehicle met with an accident on 19.4.2004. Hon'ble Supreme Court also noticed the argument that policy of insurer could not held to be a valid document in view of the fact that the cheque towards the policy issued had been dishonored even before the accident had taken place, therefore, the Insurance company was not liable to indemnify the claimants by paying the amount which fell to its share as per the Tribunal's award and it was the owner who was liable to pay the entire amount of compensation to the claimants. However, in the light of decision in **Laxmamma's** case (supra), the Hon'ble Supreme Court held that the Insurance Company was liable to satisfy the award if intimation regarding the dishonour of cheque and cancellation of policy was communicated to the policy-holder after the date of the accident. Relevant extract of the decision of the Hon'ble Supreme Court in **Balkar Ram's** case (supra) is reproduced hereunder:-

> *"3. The Appellant/Insurance Company assailed the award passed by the Tribunal essentially on the ground that the cover note for the policy of insurance was issued on 7.04.2000 for which a cheque was submitted by the owner. However, the cheque was dishonoured by the bank on 17.04.2000. Subsequently, the vehicle which was insured with the appellant-insurance company met with an accident on 19.04.2000. The appellant-insurance company, therefore, contended that as the policy of insurance could not be held to be a valid document in view of the fact that the cheque towards the policy had been dishonoured even before the accident had taken place, the insurance company was not liable to indemnify the claimants by paying the amount which fell into its share as per the Tribunal's award and it is*

> *the owner which is liable to pay the entire amount of compensation to the respondents/ claimants.*
>
> *4. However, we compliment Ms. Kiran Suri, learned counsel for the appellant for cutting short the controversy by fairly pointing out the ratio of the judgment (2012) 5 SCC 234 titled United India Insurance Co. Ltd. Vs. Laxmamma & Ors. wherein it has been held that the insurance company is liable to satisfy the award if the intimation regarding the dishonour of the cheque and cancellation of policy is communicated to the policy-holder after the date of the accident. Thus, the defence of the insurance company that the policy of insurance was not valid since the cheque had been dishonoured prior to the accident would not exonerate them from making the payment of compensation. In this matter, admittedly the accident had taken place on 19.04.2000 and the cheque although had been dishonoured prior to the accident on 17.04.2000, the intimation to the policy-holder had been given by the insurance company on 26.04.2000, in view of which the insurance company cannot be allowed to contend that the policy-holder was not holding a valid policy of insurance in regard to the vehicle which met with an accident. Admittedly, the policy-holder had already issued another cheque substituting the cheque which had earlier been dishonoured."*

12. I have considered the submissions made by learned counsel for the appellant and have also heard learned counsel for respondent No.2.

13. Admittedly, Insurance Policy Ex.R-4 dated 6.6.2014 was issued on receipt of cheque dated 5.6.2014. The cheque bounced on 27.6.2014 whereas accident took place on 09.06.2014. Intimation was given by the Insurance Company of the cancellation of the Policy vide communication dated 4.7.2014 of the Insurance Company not being liable in view of dishonour of the cheque. In

the circumstances, the matter in issue is squarely covered by the decision of the Hon'ble Supreme Court in **Laxamma's case** (supra) and **Balkar Ram's** case (supra) wherein it has been categorically laid down that where the cancellation of policy on dishonour of cheque is communicated to the policy-holder after the date of accident, the Insurance Company would be liable to satisfy the award. The position is the same in the instant case. Intimation of cancellation of the policy and avoidance of liability qua the policy in question was given vide communication Ex.R-3 dated 4.7.2014 whereas the accident took place on 9.6.2014.

14. In the light of decision of the Hon'ble Supreme Court in **Laxamma's case** (supra) and **Balkar Ram's** case (supra), it is held that cancellation of policy on account of dishonour of cheque as communicated to the policyholder after the date of accident does not absolve the Insurance Company from satisfying the Award. Accordingly, the finding of the Tribunal to the above effect is reversed.

15. Appeals allowed as above.

December 02, 2017 **(B.S. WALIA)**
ps **JUDGE**

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.