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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 10th August, 2017

+ **MAC.APP. 313/2015 and CM APPL.5919/2015 & 5920/2015**

PANKAJ AGGARWAL & ANR Appellants
Through: **Mr. Ujjwal Jha, Advocate**

versus

TATA AIG GENERAL INSURANCE CO. LTD. & ANR Respondents
Through: **Mr. Amit Kumar Singh, Adv.**
with Ms. K. Enatoli Sema,
Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The second appellant is the wife of Vimal Kumar Bansal, who was the registered owner of vehicle Hyundai car bearing registration No.DL-3CBF-7240 (hereinafter, the car). He died on 30.03.2010. His son Ankush Kumar Bansal (R2W1) had paid the premium for renewal of insurance policy for the car, it having been acknowledged by the insurer through receipt dated 31.08.2011 (Ex.R2W1/A) upon which the insurance policy was renewed. During the period of such renewal, on 08.10.2011, the car, then driven by the first appellant, came to be involved in motor vehicular accident resulting in death of Sant Lal Yadav. The fatal accident prompted the wife and other member of the family of Sant Lal Yadav (the deceased) to institute accident claim

case (Suit No.294/2011), this in the wake of detailed accident report (DAR) submitted by the police on the basis of investigation into FIR No.436/2011 which had been registered.

2. In the claim proceedings, both the appellants were impleaded as respondents and upon it being pleaded that there was an insurance policy existing, the first respondent (the insurer) was also roped in as third respondent. The insurer contested by raising the plea that it could not be called upon to indemnify as the renewed insurance policy had been taken out in the name of a person who was dead. The prime argument of the insurer was that the death of the registered owner of the vehicle (the car) was a material fact which should have been disclosed at the time of renewal and consequently it was a case where the non-disclosure of the material facts should be treated as having rendered the policy “*void-ab-initio*” within the meaning of a valid defence available under Section 149(2)(b) of the Motor Vehicles Act, 1988.

3. Both sides (the registered owner and the insurer) led evidence on the above issue, the second appellant examining herself as RW1 in addition to her son Ankush Kumar Bansal (R2W1). The insurer on the other hand examined Ms. Nidhi Kalra, Senior Executive (R3W1). It appears from the evidence led that the position taken by the second appellant was that at the time of renewal of insurance policy, the executive of the insurer had approached her telephonically and that she had been duly informed about the death and yet she persuaded and convinced her son that the policy could be renewed and that fact

would not come in the way of the benefits thereunder claimed. The witness of the insurer, on the other hand, primarily testified that the policy was *void-ab-initio* since the insured had died before the contract.

4. The second appellant admitted during her testimony before the tribunal that, after the death of the registered owner, no report was made to the registering authority or to the insurer about the death.

5. The tribunal accepted the defence of the insurer and held that it was a case of contract between a dead person and the insurer which would be *void-ab-initio*. It, however, took the view, and rightly so, that the third party interest could not be defeated. Referring in this context to the provisions contained in Section 50 and 157 of the Motor Vehicles Act, 1988, it directed the insurer to pay the compensation and closed the proceedings observing that the insurer could recover the amount paid to the claimants from the legal representatives of the deceased owner, i.e., the appellants herein in accordance with law.

6. The insurance company appears to have taken out proceedings to enforce the recovery rights against the appellants by Execution Case No.82/2012. In the course of said execution proceedings, the appellant filed objection which, however, were rejected by the tribunal by order dated 01.11.2014 holding that the executing forum could not go beyond the judgment.

7. Aggrieved with the above orders, the appellants have come up in appeal reiterating that the contract of insurance had been “renewed”

against the above backdrop and had to be enforced and that the insurance company cannot wriggle out of its responsibility.

8. Against the backdrop of what was submitted earlier at the hearing, directions were given by order dated 27.07.2017, which to the extent relevant read as under:

“ ...A question has arisen as to whether the renewal of the contract of insurance under which the benefits are claimed by the second appellant was in continuity of the original insurance contract that had been purchased by her late husband during his lifetime. For this, second appellant is directed to discover on oath, the entire chain of documents, right from the original proposal to insurance cover notes/policies upto date of the accident...”

9. No compliance has been made by the appellant. At the hearing the learned counsel representing the appellants fairly concedes that the previous contract of insurance was with some other company and that there is no continuity of the original insurance contract. It is fairly conceded that the contract of insurance governing the relevant period was taken out in the name of a dead person. This itself justifies the conclusion reached by the tribunal in the impugned judgment. Since the contract was *void-ab-initio*, no benefit thereunder can be claimed.

10. Thus, the appeal is devoid of substance and it, with all pending applications, is dismissed.

R.K.GAUBA, J.

AUGUST 10, 2017

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