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HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No. 377 of 2012

Branch Manager, the Oriental Insurance Company Ltd. Branch Office Commercial Complex T. P. Nagar Korba, Tahsil and District Korba (CG) (Insurance Company)

---- Appellant

Versus

1. Sohan Prasad Soni, aged about 57 years, S/o late Bhagwan Prasad, Bank Guard, Bhartiya State Bank, Branch Jamnipali, R/o G/5, Sada Colony, Jamnipali, Tahsil Katghora, District Korba (CG)
2. Smt. Saraswti Devi, aged about 52 years, W/o Sohan Prasad Soni, R/o G/5, Sada Colony, Jamnipali, Tahsil Katghora, District Korba (CG) (Claimants)
3. Santosh Kumar Patel, aged about 25 years, S/o Shri Chhotu Lal Patel, R/o village Phooljhar, Police Chowki Urga, P.S. City Kotwali, Korba, Tahsil and District Korba (CG) (Driver of vehicle)
4. Satveer Lal Agrawal S/o Shri Dwarika Prasad Agrawal, R/o Plot No.285, T.P. Nagar Korba, Tahsil and District Korba (CG) (Owner of vehicle)

---- Respondents

For Appellant	:	Shri Pankaj Agrawal, Advocate
For Respondents 1 & 2	:	Shri Shalvik Tiwari, Advocate
For Respondent no.4	:	Shri Punit Ruparel, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

21/02/2018

Present is an appeal by the Insurance Company assailing the award dated 14.02.2012 passed by the Motor Accident Claims Tribunal, Korba (CG) in Claim Case No.55/2009. Vide the impugned award, the Tribunal in a death case under Section 166 MV Act has awarded a compensation of

Rs.3,32,000/- with interest at the rate of 6% per annum from the date of application.

2. The solitary ground of challenge by the Insurance Company is that the Insurance Company is not liable to pay compensation for the reason that the cheque which was issued for payment of premium of the policy had subsequently got dishonoured and as such the appellant has not received any premium against the said policy. Therefore, the Insurance Company cannot indemnify a person from whom the payment has not been received. According to the counsel for the appellant, the cheque which was issued by respondent no.4 got dishonoured on 27.03.2009 and notice in this regard was also duly served upon respondent no.4 vide notice dated 30.03.2009. He submits that the Insurance Company has also led evidence of one S. K. Agrawal, the administrative officer of the appellant Company.

3. Having perused the record what is not in dispute is that the policy issued by the appellant was valid from 16.03.2009 to 15.03.2010. The cheque got dishonoured on 27.03.2009 and notice in this regard was issued on 30.03.2009. The accident took place much before the cheque got dishonoured i.e. on 25.03.2009.

4. Given the facts and circumstances of the case, this Court is of the opinion that the issue involved in the present case is squarely covered by the decision of the Supreme Court in the case of **United India Insurance Company Limited Vs. Laxmamma and Others** reported in **(2012) 5 SCC 234** where in paragraph-26 the Supreme Court holds as under:

> "In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the

> authorised 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 authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured 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."

5. In view of the aforesaid authoritative decision of the Supreme Court, this Court is of the opinion that once when from the evidence itself it is clear that the cheque got dishonoured subsequent to the accident and the notice and intimation of the cheque getting dishonoured were also issued subsequent to the accident, the Insurance Company is bound to indemnify the owner for the accident that took place before dishonouring of the cheque.

6. The appeal of the Insurance Company thus being devoid of merit deserves to be and is accordingly rejected.

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Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola