NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 652 of 2012

Royal Sundaram Alliance Insurance Company Limited, Sundaram Towers, Chennai-600002. At present Through: Branch Office, Devendra Nagar Road, Near Chawla Complex, Devendra Nagar, Raipur Chhattisgarh

---- Appellant

Versus

1. Parwati Bai W/o Bhagatram Rajak, Aged about 45 years,
2. Anandram S/o Kejuram Rajak, Aged about 65 years,
3. Dulari Bai W/o Anandram Rajak, Aged about 60 years,

   All R/o Village Vikram Pur, Thana Chhuikhadan, Tahsil Khairagarh, District Rajnandgaon Chhattisgarh
4. Keshav Bhadang S/o Govindram Bhadang Aged about 30 years, R/o Kamthi, Near Jaistambh Chowk, Tahsil Kamthi, District Nagpur. 441001 Maharashtra (Driver)
5. Sachin Sharma S/o Narsinghlal Sharma Aged about 40 years, R/o Near Jaistambh Chowk, Sharma Saw Mill, Kamthi, Tahsil Kamthi, District Nagpur, Maharashtra (Owner)

---- Respondents

For Appellant	:	Mr. Rohitashva Singh, Advocate
For Claimants	:	Mr. Roop Naik, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20/02/2018

1. The present is an appeal by the Insurance Company under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 29.10.2011, passed by the Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon, Chhattisgarh, in Motor Accident Claim Case No. 73/2010.

2. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.4,42,500/- with interest @ 9% per annum from the date of application.

3. While passing the impugned award, the liability has been fastened upon the Insurance Company. The solitary ground of challenge is that the policy which was issued by the appellant-Insurance Company subsequently was cancelled on account of the cheque which was issued towards payment of premium having got dishonoured.

4. The counsel for the appellant submits that the document in respect of the cancellation of the policy was also brought on record by the Claimants themselves and which was marked as Exhibit P/6 also before the Tribunal and thus it stands established that the policy had been cancelled by the Insurance Company and therefore the Insurance Company cannot be held liable to pay compensation indemnifying the Owner from whom no premium has been received.

5. Perusal of the record would show that the Insurance Company has not led any evidence before the Tribunal to substantiate any of their contentions. Moreover, what is also required is that no evidence is on record to show that the cancellation of the policy was duly intimated and served upon the Owner of the offending vehicle.

6. The legal position so far as the dishonouring of cheque is concerned, is by now well settled in the judgment of the Hon'ble Supreme Court in the case of "***United India Insurance Company Limited Vs. Laxmamma and Others"*** reported in ***(2012) 5 SCC 234.***

7. At this juncture, it would be relevant to refer to the decision of this High Court in the case of ***National Insurance Company Limited Vs. Pusau Ram Kurre*** decided on 2nd of September, 2016 in M.A. No. 98 of 2005 and connected matters. The facts of the said case are more or less similar to that of the preset case. It would be trite to refer to

paragraphs No. 28 & 29 of the said judgment of this Court which is reproduced hereunder:

> ***"28. It would be pertinent to note that in Laxmamma case, the policy of insurance was cancelled only after the accident had taken place.***
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> ***29. As far as the present matter is concerned, the Insurance Company had sent intimation on 15.05.2002 to the insured that her cheque had been dishonoured and the policy of insurance had been cancelled. Admittedly, no intimation was sent to the concerned RTO. If Section 146 of the Act is read, it is obvious that no person can use a motor vehicle unless it is properly insured. In the judgments cited hereinabove, it has been held that if the Insurance Company wants to avoid its liability, it must send intimation to the owner and the concerned RTO. The reason for sending intimation to the concerned RTO is that if the concerned RTO is informed that a vehicle is no longer insured, the said RTO can take steps to ensure that the vehicle is not plied in the public place. I am also of the considered view that to avoid third party liability as held in Deddappa case and Laxmamma case, the Insurance Company should not only cancel the policy of insurance, but also send intimation not only to the insured but also to the concerned RTO. In the present case, since the concerned RTO had not been intimated, the Insurance Company cannot be absolved of liability to make payment of compensation. At the same time, since the Insurance Company had intimated the insured about the cancellation of the policy of insurance and the insured took no step to pay the premium, the Insurance Company should be given the right to recover the amount paid by it as compensation from the insured and for recovery of the same, it will not have to file a separate proceeding, but can take out certificate proceeding within the meaning of Section 174 of the Act.***"

8. A perusal of the facts of this case would show that there is no evidence brought on record by any of the parties to show that the Insurance Company after the cancellation had duly sent an intimation to the Owner and the Owner was served upon the said notice of cancellation before the date of accident.

9. However, what cannot be brushed aside is the fact that Exhibit P/6 is a document, which admittedly is the cancellation of policy, which has been brought on record by the Claimants. The said document was obtained from the criminal case which was registered against the Driver

of the offending vehicle at the time of accident. The fact that at the time of accident, the relevant document was available with the Owner and inference has to be drawn that the policy stood cancelled and the Owner was duly intimated before the date of accident itself and that is how the document was available in the possession of the Owner during the time, the vehicle was seized.

10. Under the given facts and circumstances of the case, moreover since the appellant has already deposited 50% of the awarded amount, let the appellant deposit the balance of amount also with the liberty that they can recover the same from the Owner and Driver applying the doctrine of ‘pay and recovery’.

11. Under the given circumstances, the appeal is allowed in part. The payment of compensation shall be deposited by the Insurance Company with liberty to recover the same from the Owner & Driver.

12. The counsel for the Claimants submits that the respondent No.2 during the pendency of the appeal has since died. The Tribunal shall take necessary steps accordingly while disbursement of the compensation.

Sd/-
(P. Sam Koshy)
Judge

Ved