AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1050 of 2013

- Hdfc Ergo General Insurance Company Limited Regd. And Head Office Remon House, H.T. Parakh Marg, Mumbai, Pin-400020, Thru- Divisional Manager, Divisional Office, F-101, Dolphin Chamber, Opposite Bank Of Baroda, Pandri, Tah. And Distt. Raipur, P.S. Pandri, Distt. Raipur C.G., Chhattisgarh

---- Petitioner

Versus

- Shesh Narayan Sahu And Anr. S/o Bhagwat Ram Sahu Aged About 40 Years R/o Camp-1, Behind Teen Darshan Temple, Near Nehru Chowk, Bhilai, Tah. And Distt. Durg C.G., Chhattisgarh
- Vijay Kumar Pal S/o Babulal Pal Aged About 40 Years R/o Dashmesh Transport, Ring Road No. 2, Heerapur, Thana Mahoba Bazar, Raipur C.G., Presently At Sai Complex, Ubale Nagar, Chandan Nagar, Pune, Maharashtra., District : Pune, Maharashtra

---- Respondents

For Appellant	:	Shri SS.Rajput, Advocate
For Respondents	:	Shri Gautam Khetrapal, Advocate.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu

06/05/2019

1. Appellant - Insurance Company has challenged impugned award dated 22.8.2013 passed by learned 5th Additional Motor Accident Claims Tribunal, Durg (for short 'the Claims Tribunal') in Claim Case No.130/13 whereby learned Claims Tribunal has partly allowed claim application, awarded total sum of Rs.1,03,895/- along with interest @ 7% p.a. to claimants and fastened liability to satisfy award on insurance company.

2. Brief facts relevant for disposal of this appeal are that on 5.9.2010 at about 7.00 p.m. respondent No.1/claimant was returning home on foot from workplace i.e. Satkar Company, after discharging his duty and when he was crossing road near Teen Darshan Mandir, one truck bearing registration number MH13-G-774, driven by non-applicant No.1/respondent No.2, dashed him as a result of which he sustained grievous injuries over his head, face, chest and other parts of body. Respondent No.1 was immediately taken to District Hospital, Supela where looking to his critical condition, he was referred to District Hospital, Durg. Matter was reported to the police based on which offence vide Crime No.818/10 was registered against non-applicant No.1/respondent No.2 for commission of offence punishable under Sections 279, 337, 338 of the Indian Penal Code.

3. On account of injuries sustained by claimant/respondent No.1 in the said accident, he filed claim application before competent Claims Tribunal claiming Rs.15,52,200/- as compensation under different heads.

4. Non-applicant No.1/Respondent No.2 submitted reply to claim application and denied the fact that accident occurred from his vehicle. It was pleaded that claimant/respondent No.1 herein himself was responsible for accident as he was crossing road negligently and without looking oncoming vehicle. On the date of accident offending vehicle was insured with non-applicant No.2/appellan Insurance Company and there was no violation

of any of the conditions of insurance policy and as such, the insurance company is liable for payment of compensation, if any, awarded by the Claims Tribunal to the claimant.

5. Non-applicant No.2 also submitted its reply to claim application and stated that insurance company was not informed about alleged accident as per terms and conditions of insurance company; on the date of accident, driver of offending vehicle was not having valid and effective driving license and there was no valid permit. Thus, the offending vehicle was being plied in breach of conditions of insurance policy, therefore, the insurance company is not liable to indemnify the insured.

   It was also pleaded that cheque issued towards payment of premium of policy was dishonoured and therefore policy issued in favour of non-applicant No.1/respondent No.2 herein was cancelled on 29.12.2009 from the date of its inception. Hence, the insurance company cannot be saddled with liability of satisfying impugned award because it did not receive premium.

6. On the basis of pleadings and evidence adduced by respective parties, the Claims Tribunal framed as many as five issues for consideration and after conclusion of trial, partly allowed claim application, awarded a total sum of Rs.1,03,985/- as compensation and fastened liability on insurance company.

7. Learned counsel for the appellant would submit that cheque dated 15.12.2009 (Ex.D-2C) issued by owner of offending

vehicle towards premium for renewal of policy was dishonoured by Rupee Co-operative Bank Limited, Kharadi Chandan Nagar Branch, Pune vide memo dated 17.12.2009 (Ex.D3-C) and intimation in this regard was issued to insurance company vide memo dated 17.12.2009 (Ex.D3-C), therefore, the policy had been cancelled and owner of vehicle had also been intimated of the same vide letter dated 29.12.2009 (Ex.D4-C). On the date of accident there was no policy in existence binding insurance company to pay compensation. In such a situation, the Claims Tribunal ought not to have held insurance company liable to indemnify respondent No.2, owner of offending vehicle. In support of aforesaid submission, reliance has been placed on **Deddappa & ors v. The Branch Manager, National Insurance Co. Ltd.** reported in **AIR 2008 SC 767**.

8. Learned counsel for respondent No.1-claimant would argue that on receipt of cheque towards premium, an insurance policy was issued in favour of offending vehicle. Though Insurance Company has produced document Ex.D4C showing cancellation of policy from its inception due to non-realization of premium cheque, but it failed to establish by adducing cogent and reliable evidence that said intimation had been received by insured before accident. In absence of proof regarding communication of cancellation of policy by insurer to insured, unilateral cancellation of policy without intimation to insurer cannot be accepted as valid cancellation in view of provisions of the Motor Vehicles Act, 1988. Reliance is placed on the

judgment delivered in **United India Insurance Company Ltd. v. Laxmamma & ors** reported in **(2012) 5 SCC 234**.

9. I have heard learned counsel for the parties and perused the records.

10. Moot question which arises in this case for consideration of this Court is whether intimation regarding cancellation of policy on account of dishonour of cheque towards premium was duly served on insured through regular modes of service, acceptable under the law?

11. Before adverting to documentary evidence available on record, it is necessary to consider first relevant provisions of Section 64-VB of the Insurance Act, 1938, which is reproduced herein below:-

> "64-VB. No risk to be assumed unless premium is received in advance.-(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.
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> (2) For the purpose of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer."

12. A bare reading of above quoted provisions makes it clear that risk may be assumed not earlier than the date on which premium has been paid in cash or by cheque to the insurer. In the case at hand, the insured owner of offending vehicle issued

cheque dated 15.12.2009 (Ex.D2-C) in favour of insurance company towards premium for renewal of policy and pursuant to which, Policy No.VG00011638000101 was issued in favour of respondent No.2 herein, which was valid from 18.12.2009 to 17.12.2010. Thus, it is clear that after receiving cheque, the insurance company renewed policy in favour of owner of offending vehicle covering risk for it on the terms and conditions mentioned therein.

13. Before the Claims Tribunal, the insurance company produced copy of bank memo dated 17.12.2009 (Ex.D2-C) and letter dated 29.12.2009 (Ex.D4-C) showing dishonour of cheque issued by respondent No.2 towards premium and sending of intimation to respondent No.2 regarding cancellation of policy from its inception, respectively. This cancellation letter is shown to be sent to respondent No.2 on 25.1.2010 by way of Under Postal Certificate (UPC), but said document is only a photocopy and on the said letter date of post office is not very clear and specific. Along with letter dated 29.12.2009 (Ex.D4-C), a list of policy holders to whom letters were issued under UPC has also been annexed and from the date appearing in this list appears as 25.1.2010 i.e. after about one month from the date on which letter is shown to be issued.

14. Appellant Insurance Company examined one Ramraj Vishwakarma as NAW2-1, who was working as Law Officer with appellant. He has stated in his statement that intimation

with respect to dishonour of cheque was sent to respondent No.2 on 25.1.2010 through UPC. He has further stated that on the basis of cheque dated 15.12.2009, on 21.12.2009 insurance policy was issued by company in favour of owner of offending vehicle. He also stated that information with respect to cancellation of policy was sent to the owner of vehicle vide Ex.D4-C. In the cross-examination this witness has admitted that he had not filed receipt of information/ intimation with respect to cancellation of policy.

15. From perusal of material available on record it is clear that appellant insurance company failed to produce any clinching piece of evidence showing service of intimation regarding dishonour of cheque or cancellation of policy to respondent No.2. Furthermore, it is also evident from the records that insurance company has sent such an important information, which is affecting rights & liabilities of respondent owner of vehicle, in a very casual manner. Proper course for sending such type of information should be through registered post with acknowledgement so that the company could discharge onus of proof of service by filing AD card, which shows receipt of postal article by the addressee. Receipt of intimation by owner of vehicle is also necessary so as to enable him to make payment of premium amount by some other mode, may be in cash, to cover risk of vehicle insured by insurance company. In the present case, though it has been claimed by appellant insurance company that intimation regarding cancellation of

policy was sent through UPC, but there is nothing on record showing receipt of such intimation by respondent No.2-owner and in absence thereof, it is difficult to hold that intimation regarding cancellation of policy was actually served on the insured-respondent.

16. In **National Insurance Co. Ltd. v. Seema Malhotra** reported in **(2001) 3 SCC 151**, reliance on which has been placed by learned counsel for the appellant, the Hon'ble Supreme Court while relying on the decision of a three Judges Bench in **Oriental Insurance Co. Ltd. Inderjeet Kaur** reported in **(1998) 1 SCC 371** has held thus:-

> "17. In a contract of insurance when an insurer gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a Bill of Exchange drawn on a specified banker. A Bill of Exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.
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> 18. Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation."

17. In **United Insurance Company Ltd. v. Laxmamma** reported in **(2012) 5 SCC 234** issue regarding dishonour of cheque of premium amount and while taking into consideration its earlier decisions including decision of Seema Malhotra's case (supra), the Hon'ble Supreme Court has held thus:-

> "26.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."

18. Hon'ble Supreme Court in aforementioned judgment i.e. Laxmma, has given force on sending all intimation of dishonouring of cheque and that said intimation/information has reached the insured before the accident. Hon'ble Supreme Court in the aforementioned judgment has held that as information of cancellation of policy has been given after the date of accident, therefore, insurer became liable to satisfy award of compensation passed in favour of claimants.

19. Keeping in mind the law laid down by Hon'ble Supreme Court in above judgments, if we consider facts of present case, it would show that cheque was issued on 15.12.2009, information regarding dishonour of cheque was sent by concerned bank vide memo dated 17.12.2009, whereas policy was issued on 21.12.2009, which was valid from 18.12.2009 to 17.12.2010. According to appellant, cancellation of policy was communicated to the insured vide letter dated 29.12.2009 sent

through UPC. However, there is no evidence to show that letter dated 29.12.2009 was reached and received by respondent No.2. Respondent No.1 could not got knowledge of dishonouring of cheque in time to enable him to make payment of premium of policy. Case law relied upon by learned counsel for the appellant i.e. Deddappa's case (supra), is on different facts and circumstances, which may not be applicable to the fact of present case.

20. Therefore, in the facts and circumstances of case and in view of law laid down by Hon'ble Supreme Court that intimation/information sent by insurance company must reach the insured before accident. Appellant herein cannot avoid its liability to satisfy award of compensation passed in favour of claimant, who is third party. Thus, this Court is of the opinion that the insurer is not entitled to seek exoneration from its liability because it utterly failed to show that cancellation of policy was duly informed to Insured-respondent No.2.

21. For the foregoing discussions, this Court is of the opinion that appeal has no substance, the same is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/