

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-1945-2017(O&M)

Date of decision:-1.5.2019

The New India Assurance Company Ltd.

...Appellant

Versus

Smt.Roshni Devi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vinod Gupta, Advocate
for the appellant.

H.S. MADAAN, J.

This appeal is directed against the Award dated 4.10.2016 passed by Presiding Officer, Motor Accident Claims Tribunal, Rewari vide which he had allowed the claim petition filed by legal representatives of Hoshiyar Singh against respondents i.e. Bhoop Singh Yadav – driver, Devender Singh – owner and New India Assurance Co. Ltd. - insurer of the Maruti Ritz car having registration No.HR-36S-7065 (hereinafter referred to as the offending vehicle) and compensation of Rs.13,02,949/- was awarded to the claimants. The liability of all the three respondents was made joint and several.

The Insurance Company felt aggrieved by the Award and has filed the instant appeal, notice of which was issued to respondent No.7 – Devender Singh – owner of the offending vehicle. He was duly served but did turn up to offer a contest.

I have heard learned counsel for the appellant – insurance company besides going through the record.

Learned counsel for the appellant has argued that Devender Singh – owner of the offending vehicle had got the same insured with appellant – insurance company on 6.8.2015 issuing a cheque for premium; however, on presentation the cheque was dishonoured on 13.8.2015 regarding which Devender Singh was informed by the insurance company on 21.8.2015; that though the accident had taken place on 18.8.2015 but because of the fact that insurance premium had not been paid/deposited by insured, the contract of insurance is without consideration, as such null and void and the insurance company is not liable to indemnify the respondent No.7 – Devender Singh for any amount. He has to pay under the policy to the claimants.

In support of his contentions, learned counsel for the appellant – insurance company has referred to judgment **National Insurance Co. Ltd. Versus Seema Malhotra, 2001(2) RCR(Civil)456** by the Apex Court as well as judgment **M/s Industrial Promotion & Investment Corporation of Orissa Ltd. Versus New India Assurance Company Ltd. and anr.** in Civil Appeal No.1130 of 2007. The Insurance Company had taken up this plea before the Tribunal also and has led evidence in that regard by examining its Assistant Manager - Sh.Bhagwan Dass as RW1, who had deposed that the policy in question was cancelled by their company since the cheque given by Devender Singh – insured was dishonoured due to insufficient funds and intimation regarding cancellation of policy was given to Devender Singh by speed-post,

forwarding a copy to Regional Transport Authority. Devender Singh – respondent No.2 had got his statement recorded as RW3 besides examining Bhupender Singh as RW2, authorized person of M/s Rohan Motors Gurgaon, an authorized Maruti Insurance Broking Pvt. Ltd. Agent, who had deposed that Devender had approached him for renewal of insurance policy of his car on 5.8.2015 and after receiving the premium in cash, he had issued cheque from his account in favour of New India Assurance Company for renewal of the insurance policy and that after receiving the renewed insurance policy, he had handed over the same to said Devender but due to some technical reasons, the cheque was returned as uncleared, therefore, the policy was cancelled on 21.8.2015. He had proved certified copy of bank statement as Ex.RW2/B. In his cross-examination, he had admitted that he was not an authorized agent of New India Assurance Company Ltd. and that he had not issued any receipt regarding payment of premium for renewal of insurance policy of car in question. RW3 Devender Singh, registered owner of the car in question had stated that Bhupender Singh was known to him and he had paid a sum of 9,017/- in cash to Bhupender Singh for getting insurance of the car from 6.8.2015 to 5.8.2016; that Bhupender Singh had issued a cheque from his account in the sum of Rs.9,017/- in favour of New India Assurance Co. Ltd., therefore, insurance policy was issued to him and he had not received any intimation orally or in writing that cheque in question had been dishonoured. As the things turn out, the cheque deposited with insurance company towards premium is dated 2.8.2015. It was returned uncashed due to insufficiency of funds on 13.8.2015. The

insurance policy was cancelled on 3.9.2015, whereas the accident had taken place on 18.8.2015, which means that the insurance company had come to know about dishonouring of the cheque prior to the date of accident. Cancellation of insurance policy by insurance company on 21.8.2015 does not affect the right of recovery of the claimant, who is a third party. The contract of insurance could be void between insurance company and insured but since the insurance policy was in existence and was cancelled and cancellation conveyed to the insured after the accident, the claimants can certainly recover the amount of compensation from the insurance company, though the insurance company could recover that amount from the insured.

The version of respondent No.2 – insured does not come out to be plausible and convincing of his having given money in cash to Bhupender Singh; Bhupender Singh issuing cheque from his account, which got bounced. One could understand the things if said Bhupender Singh was an authorized agent of appellant – insurance company but it was not so. Rather as deposed by RW3 Devender Singh in his cross-examination, he did not know Bhupender Singh personally prior to payment of premium. Therefore, it is hard to believe that the things would have happened as respondent No.2 – Devender Singh wants the Court to believe. The Tribunal has dealt with the matter in a very detailed and convincing manner in light of the factual and legal position. For ready reference, the relevant portion of discussion is reproduced as under:

*Even if the insurance policy has been cancelled on
21.8.2015 as is evident from the document as Ex.RW2/C;*

meaning thereby the same has been cancelled after the date of alleged accident. It is held in National Insurance Co. Ltd. Vs. Balkar Ram & Ors. 2013(3) Apex Court Judges 470 (SC)(supra) that “insurance company is liable to satisfy the award if the intimation regarding the dishonour of cheque and cancellation of policy is communicated to the policy holder after the date of accident. Insurance company cannot be allowed to contend that policy holder was not holding a valid policy”. Reference can be made to United India Insurance Co. Ltd. Versus Laxmamma & Ors. IV (2012) Accident and Compensation Cases 801(SC) wherein it is held by Hon'ble Apex Court that “where policy of insurance is issued by authorised insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, liability of authorized insurer to indemnify third parties in respect of liability which that policy covered subsists and it has to satisfy award unless policy is cancelled by authorised insurer and intimation of such cancellation reached insured before accident.” In the citation New India Assurance Co. Ltd. Vs. Dr.Manisha Hirpurkar and others 2015 ACJ 1358 (Chhattisgarh High Court at Bilaspur) (supra) the accident in question had occurred on 13.11.2006 whereas information regarding dishonour of cheque and cancellation of insurance policy was sent on 5.4.2006 i.e. prior to the accident of accident. In citation Usha Aggarwal

Vs. Parmod Kumar Gupta and ors. IV (2013) Accident and Compensation Cases 838 (Delhi High Court) (supra) the accident had occurred on 23.12.1991 whereas information regarding dishonour of cheque and cancellation of policy was given on 29.11.1991. In citation **Daddappa and others Vs. Branch Manager, National Insurance Co. Ltd. 2008 ACJ 581(SC)** (supra) the accident had occurred on 6.2.1998 whereas intimation about cancellation of policy of insurance was given on 6.11.1997. Hence, all the above mentioned citations relied upon by learned counsel for respondent no.3 are distinguishable since as per the facts of these citations, accident had occurred after communication regarding cancellation of the insurance policy. Thus, in view of discussion made above, it is proved on record that on the date of alleged accident insurance policy as Ex.R5 was subsisting; neither it was cancelled nor intimation regarding cancellation of policy was received by the insured.

Therefore, the liability of appellant – insurance company to satisfy the Award passed in favour of claimants is definitely there. However, since the contract of insurance was without consideration as the cheque for premium had bounced, the appellant insurance company would be entitled to recover the amount paid by it to the claimants to satisfy the Award from respondent No.2 – insured by way of filing execution application before the Tribunal without there being any necessity of filing

separate suit. The judgments referred to by learned counsel for the appellant are not applicable due to different facts and circumstances as well as the context in which these observations had been made.

With such modification, the appeal stands allowed partly.

1.5.2019

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**