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

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Decided on: 29.07.2019

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MAC.APP. 700/2019 & CM Nos.33715-17/2019

KIRAN BANERJEE & ORS.

..... Appellants

Through: Mr. Mahesh Thakur, Advocate.

Versus

NATIONAL INSURANCE COMPANY & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellants impugn the right of recovery granted against them apropos the award of compensation to be paid by the insurance company. The ground of challenge is that the appellants had informed the insurer that the person, in whose name the insurance policy was issued i.e. the registered owner of the offending vehicle, had passed away on 24.05.2012. However, nothing was brought on record by the appellants to substantiate the aforesaid contention. Indeed, the insurer has denied that any such information was given to it.¹

¹ para 38 of the impugned order.

2. It was the case of the insurer that it came to know about the factum of demise of the registered owner of the vehicle, only in the year 2016, when an e-mail was received by it from its legal office. It is another matter though that a copy of that e-mail was never produced.

3. Be that as it may, one person died in an accident on 19.10.2014 involving the insured vehicle. The policy in question was renewed from 11.04.2014 to 10.04.2015 and the third party liability has been fastened upon the insurer on the basis of the said document, primarily with the objective that an unsuspecting third party should not be remediless in circumstances of such a nature as the present case, especially in the context of the socially beneficial legislation from which these proceedings ensue.

4. The learned counsel for the appellants rely upon the judgment of the Supreme Court in *United India Insurance Company Limited vs. Santro Devi & Ors.*, (2009) 1 SCC 558, to contend that when the premium is accepted, the insurance policy becomes binding, therefore, the policy holder would have no liability towards any claims for indemnification. However, the essence of the aforesaid judgment is that the statute itself takes over the validity of the contract i.e. apropos third party injuries/claims. In the said case, it was held as under:-

“13. The insurer could deny its liability on limited grounds as envisaged under sub-section (2) of Section 149 of the Act. One of the grounds which is available to the insurance company for denying its statutory liability is that the policy is void having been obtained by reason of non-disclosure of a material fact or by a representation of fact which was false in some material particular.

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16. *The provisions of compulsory insurance have been framed to advance a social object. It is in a way part of the social justice doctrine. When a certificate of insurance is issued, in law, the insurance company is bound to reimburse the owner. There cannot be any doubt whatsoever that a contract of insurance must fulfill the statutory requirements of formation of a valid contract but in case of a third party risk, the question has to be considered from a different angle.*

17. *Section 146 provides for statutory insurance. An insurance is mandatorily required to be obtained by the person in charge of or in possession of the vehicle. There is no provision in the Motor Vehicles Act that unless the name(s) of the heirs of the owner of a vehicle is/are substituted on the certificate of insurance or in the certificate of registration in place of the original owner (since deceased), the motor vehicle cannot be allowed to be used in a public place. Thus, in a case where the owner of a motor vehicle has expired, although there does not exist any statutory interdict for the person in possession of the vehicle to ply the same on road; but there being a statutory injunction that the same cannot be plied unless a policy of insurance is obtained, we are of the opinion that the contract of insurance would be enforceable. It would be so in a case of this nature as for the purpose of renewal of insurance policy only the premium is to be paid. It is not in dispute that quantum of premium paid for renewal of the policy is in terms of the provisions of the Insurance Act, 1938.*

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26. *In this case, the statute itself takes care of validity of the contract. It is mandatory. Once a valid contract is entered into, only because of a mistake or otherwise, the name of the original owner has not been mentioned in the certificate of registration and/or the documents of*

hypothecation of the vehicle with the bank had still been continuing in his name, it cannot be said that the contract itself is void unless it was shown that in obtaining the said contract a fraud had been practised. Not only the particulars of fraud had not been pleaded, but even no witness was examined on behalf of the appellant. It cannot, thus, be said that a case of fraud in the matter of entering into the contract of insurance had been made out by the appellant.”

5. The learned Tribunal has distinguished the said judgment and held that in the peculiar circumstances of the present case, the contract would be binding. It has held as under:-

“38. In order to appreciate the rival contentions raised on behalf of both the sides, it would be appropriate to discuss the testimony of relevant witness examined on this issue. As already noted above, legal heirs of registered owner/insured failed to lead any evidence on the aforesaid aspect, whereas insurance company has examined its Assistant Manager as R3W1 during the course of inquiry. R3W1 deposed in his evidence by way of affidavit (Ex. R3W1/A) that insurance policy in respect of vehicle no. HR37-C-2217 was obtained by legal heirs of Anil Banerji by concealing the fact that owner of the vehicle was no more alive and said concealment on their part, absolve the insurance company from its liability to pay the compensation amount as the insurance policy was void-ab-initio and there was no valid contract between insured and insurer. He relied upon office copy of insurance policy and its annexures as Ex. R3W1/1 (colly). During his cross examination on behalf of legal heirs of registered owner/insured, he admitted that insurance policy was renewed on the basis of old insurance policy and in such a situation, there was no requirement of physical presence of the owner of the vehicle at the time of renewal of insurance policy. He denied the suggestion that at the time of renewal of insurance policy, legal heirs of deceased owner had

disclosed regarding death of registered owner or that insurance company intentionally renewed the insurance policy in order to get the monetary benefits and despite having knowledge about death of Anil Banerji. In response to Court question, the aforesaid witness had clarified that the insurance company acquired knowledge about the factum of insurance policy being got issued in the name of dead person only in the year 2016 when E-mail was received by it from its legal office. However, he could not produce any such E-mail on record.

39. *In the backdrop of the aforesaid evidence which has come on record, the question which arises for decision before this Claims Tribunal is as to whether the insurance company should be saddled with the liability to pay the entire compensation amount determined above or it should be completely exonerated or it should be made liable to pay the compensation amount and thereafter, to recover the same from the legal heirs of registered owner of the vehicle on the basis of " Pay & Recover Principle".*

40. *Similar question arose for consideration before Hon'ble Delhi High Court in the case of Pankaj Aggarwal mentioned supra, wherein facts were totally identical as premium for renewal of insurance policy in respect of offending car had been paid by son of registered owner of the said car who had already expired prior to the period in question for which insurance policy was got renewed and the said car came to be involved in Motor Vehicular Accident resulted into death of one Sant Lal Yadav. Similar plea was raised by insurance company that it could not be called upon to indemnify as renewed insurance policy had been taken out in the name of a person who was dead and it was a case of non disclosure of material facts rendering the insurance policy as void-ab-initio within the meaning of valid defence available U/s 149 (2) (b) of M.V Act. After considering the legal position on the point in issue, Hon'ble Delhi High Court upheld the view taken by Claims Tribunal that third party interest could not have been defeated and*

thus, directed insurance company to pay the compensation amount with liberty to recover the same from the legal representatives of deceased owner, in accordance with law.

41. *The facts of the present case are totally covered by the aforesaid decision of Hon'ble Delhi High Court. The cited decision on behalf of claimants, is entirely distinguishable from the facts and circumstances of the present case inasmuch as insurance company, in cited decision, failed to examine any witness during the course of inquiry and in said backdrop, Hon'ble Apex Court held that the insurance co had been accepting the premium every year, with its eyes wide open, from widow of deceased registered owner. There was one another aspect involved in the said case i.e. the offending vehicle was hypothecated to a Nationalized Bank and the Certificate of its Registration, carried the name of the bank also and admittedly, it was the bank which had paid the premium, which is not the case herein."*

6. Furthermore, the Supreme Court in the judgment of ***Reliance Insurance Company Limited & Anr. vs. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175***, has held that the concealment of any vital information would be a breach of the fundamental principle of uberrimae fidei, on which all insurance is based. Where the insured has breached utmost good faith, it would render the policy revocable and/or make the claim repudiable by the insurer. It has reasoned as under:-

"29. Contracts of insurance are governed by the principle of utmost good faith. The duty of mutual fair dealing requires all parties to a contract to be fair and open with each other to create and maintain trust between them. In a contract of insurance, the insured can be expected to have information of which she/he has knowledge. This justifies a duty of good faith, leading to a positive duty of disclosure. The duty of disclosure in insurance

contracts was established in a King's Bench decision in Carter v Boehm (1766) 3 Burr 1905, where Lord Mansfield held thus:

"Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the under-writer into a belief that the circumstance does not exist, and to induce him to estimate the risque, as if it did not exist."

7. In the present case, the policy holder had passed away on 24.05.2012 and the accident happened on 19.10.2014. In the interim, the Insurance Company was never informed about this very crucial information that the policy holder had passed away. In the circumstance, the policy itself would have ended on the expiry of its tenure or could not have otherwise been issued against a dead person. The claim could be repudiated but the statutory liability of the insurer has been invoked to pay compensation to the deceased and to recover the said amount from the owner of the offending vehicle. This is the logical and statutory corollary.

8. In view of the above, this Court finds no reason to interfere with the said order. The appeal is without merit and is accordingly dismissed. The pending applications also stand dismissed.

NAJMI WAZIRI, J.

JULY 29, 2019

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