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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 513 of 2014

{*Arising out of Award dated 21.02.2014 passed by the 4th Additional Motor Accident Claims Tribunal, Raipur, District Raipur, in Motor Accident Claim Case No. 34/2012*}

- United India Insurance Company Ltd. Through- Its Divisional Manager, Divisional Office, Krishna Complex, 1st Floor, Kutchery Chowk, Raipur, Distt. Raipur (C.G.)

---- Appellant

Versus

1. Rukhmani Bai Sahu Wd/o Late Laljee Sahu Aged About 30 Years
2. Ku. Girija Sahu D/o Late Laljee Sahu Aged About 11 Years
3. Ku. Gayatri Sahu D/o Late Laljee Sahu Aged About 8 Years,
4. Ku. Lukeshwari Sahu D/o Late Laljee Sahu Aged About 6 Years
5. Nohar Lal Sahu S/o Late Bhagtu Ram Sahu Aged About 52 Years
6. Shanti Bai Sahu W/o Nohar Lal Sahu Aged About 47 Years

   Respondents No. 2 to 4 are minor-through their mother-Rukhmani Bai Sahu (Respondent No.1)

   Respondents No. 1 to 6 all are R/o Village- Kotani, Tah. Aarang, P.S. Mandir Hasaud, District : Raipur, Chhattisgarh

7. Sukhram Dhruv S/o Banu Ram R/o Near Mandir Hasaud, Railway Station, P.S. Mandir Hasaud, District : Raipur, Chhattisgarh. (Deleted as per order dated 10.08.2020.)
8. Hora Transport Corporation Pvt.Ltd. Raipur, Address- Fafadeh, Bilaspur Road, Raipur, District : Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For Respondent No. 8	:	Shri Mayank Kumar, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge
Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

10.08.2020

1. Appeal is at the instance of the Insurer of the offending vehicle bearing Registration No. CGT/04J/0161. Grievance is against the fixation of the

liability to an extent of Rs. 5,01,600/- with interest, ordered to be satisfied by the Appellant in connection with the death of the deceased in a road traffic accident, despite the fact that the cheque issued by the insured towards premium was dishonoured; pursuant to which the policy was cancelled and communicated.

2. The sequence of events reveals that the deceased was travelling in the capacity of an employee in the vehicle bearing Registration No. CG/04J/0161 owned by the 8th Respondent and driven by the 2nd Respondent. While proceeding so, the offending vehicle met with an accident causing fatal injuries to the deceased who succumbed to the same; in turn leading to the claim petition filed by the widow, children and parents of the deceased under Section 166 of the Motor Vehicles Act, 1988. The driver and owner of the offending vehicle filed their written statement denying the claim, however, adding that the vehicle was insured at the relevant time. The contention of the Appellant-Insurer before the Tribunal was that the deceased was not travelling in the capacity as an employee and that several persons were travelling in the goods carriage at the relevant time, which was in violation of the relevant provisions of law. It was also pointed out that the 8th Respondent was the owner of seven vehicles including the offending vehicle and that he had given Ex.D-1 cheque dated 18.02.2011 for a sum of Rs. 84,734/- as the consolidated premium for renewal of the Insurance Policy. On issuance of the cheque, Ex.D-2 receipt was issued, incorporating a condition that the above receipt will be valid only on honouring of the cheque issued towards the premium for bringing the Ex.D-4 policy operational for the period from 26.02.2011 to 25.02.2012.

3. According to the Appellant, on production of the cheque for encashment through their bankers; namely Standard Chartered Bank, it was dishonoured by the bankers of the 8th Respondent; namely Punjab & Sindh Bank for want

of sufficient funds in the account and this was intimated vide memo dated 04.03.2011. Intimation in this regard was given by the bankers of the Appellant alongwith the slip dated 30.04.2011, and thereafter, on 24.05.2011 the Appellant cancalled Ex.D-4 policy and intimation was given to the RTO and also to the 8th Respondent-insured by registered post. The contention of the Appellant was that in view of the disclaimer clause in the policy, since the cheque was dishonoured on 04.03.2011, the policy would stand cancelled with effect from that date and hence there was no valid insurance policy on the date of the accident occurred on 15.04.2011. The said contention however was repelled by the Tribunal and the liability was mulcted upon the Appellant, and hence the appeal.

4. The legal position stands settled by the Apex Court as per the judgment in ***United India Insurance Company vs. Laxmamma And Others*** reported in ***(2012) 5 SCC 234*** to the effect that it is open for the Insurer to accept the premium either by cash or by cheque or by such other mode and having accepted the premium paid as per one of the above means and after issuing the policy, it cannot simply turn around and say that the policy would stand cancelled automatically once the cheque is dishonoured. This is not disputed. The Apex Court also made it clear that cancellation of the policy has to be communicated to the insured and also to the RTO, before occurrence of the accident, so as to avoid the liability to the third parties.

5. Admittedly, Ex.D-4 policy was for the period from 26.02.2011 to 25.02.2012. Ex.D-1 cheque dated 18.02.2011 came to be dishonoured by the bankers on 04.03.2011 and pursuant to the communication issued by the bankers of the Appellant on 30.04.2011, the policy was cancelled only later on 24.05.2011 and the position was communicated to the 8th Respondent-owner and the RTO only on that day. Since the accident had occurred on 15.04.2011 and further since the policy was cancelled only on 24.05.2011, the policy is liable to be held as valid and in existence as on the date of accident i.e.

15.04.2011. This being the position, the principle to be adopted is only to "pay and recover", lest the Claimants should suffer for the mischief done by the parties concerned or for the delay in causing the policy to be cancelled then and there or to have collected the amount due towards the premium from the insured by appropriate steps/means. The learned counsel for the Appellant also conceded that the prayer in the instance appeal would stand confined to the 'right of recovery'.

6. As noted from the proceedings sheet, since the 7th Respondent-driver of the offending vehicle was no more and since his legal heirs were not impleaded in the party array and further since we have allowed I.A. No. 02 of 2019 filed by the Appellant to delete the name of the 7th Respondent, there cannot be any recovery proceeding against the said Respondent, who ought to have been represented through the legal heirs, if at all any property belonging to the 7th Respondent had been inherited by them.

7. With regard to the liability of the 8th Respondent-owner of the offending vehicle, we put a specific query as to the course of action. The sequence of events as taken note of by the Tribunal while passing the award has not been rebutted by the 8th Respondent-owner and no appeal has been filed by the said Respondent, if at all he was aggrieved of the finding. Insurance is a contract which will become valid, binding and enforceable in law, once the proposal is accepted and supported by a valid consideration. The consideration for accepting the risk was paid by the 8th Respondent by way of cheque, which undisputedly came to be dishonoured for want of sufficient fund. As such, there is no valid consideration for the agreement / coverage and it is in the said circumstance, that the policy has been cancelled and communicated on 24.05.2011. There is no case for the 8th Respondent that the 8th Respondent had satisfied the

premium in cash or otherwise, on getting the intimation as to the dishounor of the cheque in this regard.

8. In the above facts and circumstances, we are of the view that the award passed by the Tribunal requires to be modified. While protecting the award passed in favour of the Claimants, we hold that the policy came to be cancelled by the Appellant for non-satisfaction of the premium. Since such cancellation of the policy was effected only on 24.05.2011, the Appellant is liable to satisfy the risk and meet the liability towards the 3rd party/Claimants in respect of the accident occurred previously on 15.04.2011. However, it is declared that the Appellant is entitled to get the amount recovered from the 8th Respondent-Insured because of the cancellation of policy for non receipt of the premium.

9. In the said circumstances, it shall be for the Appellant to satisfy the award amount to the Claimants and they are free to proceed with further steps in accordance with law for recovery of the amount due from the 8th Respondent by way of appropriate steps.

10. The Award passed by the Tribunal stands modified. Appeal is allowed in part, to the extent of as mentioned above.

Sd/- Sd/-

(P. R. Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge

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