

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.141 OF 2007

United India Insurance Company Ltd.,
Through its Divisional Manager and
Authorised Representative and Signatory,
Ahmednagar Divisional Office,
Market Yard, Ahmednagar

... APPELLANT

VERSUS

- 1) Meera Gopal Nangare,
Age 42, Occu. Household
- 2) Satish Gopal Nangare,
age 33, Occu. Education
- 3) Prakash Gopal Nangare,
Age 32, Occu. Education
- 4) Ramesh Gopal Nangare,
Age 31, Occu. Education,
- 5) Rupali Gopal Nangare @
Rupali Rupesh Durekar,
Age 29, Occu. Education

All R/o Matoshri Niwas,
Vaiduwadi, Savedi, Ahmednagar

- 6) Mrs. Prabha Prakash Lodha,
Age 48, Occu. Truck Owner,
R/o 125/2, Erandwana,
Prabhat Road, Pune – 4

... RESPONDENTS

.....
Shri A.B. Gatne, Advocate for appellant
Shri N.C. Garud, Advocate for respondents No.1 to 5.
Shri S.V. Warad, Advocate for respondent No.6
.....

CORAM : R. G. AVACHAT, J.

DATE : 6th December, 2021

J U D G M E N T :

This is Insurance Company's appeal, taking exception to the judgment and award dated 15/9/2006, passed by Chairman, Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim Petition No.1084/1999 whereunder a sum of Rs.2,00,000/- has been awarded as compensation on account of death in vehicular accident and directed to be paid jointly and severally by the appellant Insurance Company and the owner of the vehicle involved in the accident. The challenge is mainly on the ground of dishonour of cheque issued by the insured towards payment of premium of the insurance cover.

2. Heard. Learned counsel for the appellant – Insurance Company would submit that, the premium was paid by cheque. The cheque was dishonoured on its presentation for encashment. The appellant Insurance Company, therefore, cancelled the contract of insurance. It has, therefore, no liability to pay any compensation. He would further submit that, if the Court holds the appellant Insurance Company to be liable to pay the compensation to a third party, it be held to be entitled to recover the amount of

compensation to be paid by it from the insured. In support of his submissions, learned counsel for the appellant relied on the judgment of the Apex Court in case of **United India Insurance Company Limited Vs. Laxmamma and others**, [(2012) 5 SCC 234].

3. Learned counsel for the respondent would support the impugned award.

4. The policy of insurance covered the period from 13/2/1999 to 12/2/2000. The cheque towards the premium was issued on 12/2/1999. The accident took place on 14/5/999 i.e. during the period of insurance cover. The cheque was dishonoured on 17/2/1999. Intimation regarding the dishonour of cheque and cancellation of the policy of insurance was issued thereafter. It was a claim made by the legal representatives of the deceased, a third party. On the date the accident took place, the policy of insurance was in force.

5. In paragraph No.26 of the judgment in case of Laxmamma (supra), it has been observed by the Apex Court:-

“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."

6. Since the policy of insurance was in force on the day the vehicle met with the accident, the appellant Insurance Company is bound to pay the amount of compensation granted under the impugned award. The fact is, however, that, post accident, the cheque issued towards payment of premium was dishonoured. The appellant Insurance Company, therefore, cancelled the policy of insurance and gave its intimation to the insured. Necessarily, the appellant Insurance Company would be entitled to recover the amount of compensation that it will be required to pay under the

award. For recovery of the said amount, it cannot be driven to a fresh round of litigation. In case of **United India Insurance Co. Ltd. Vs. Shashi Prabha Sharma & ors.**, [(2015) AAC 2532], a Full Bench judgment of the Allahabad High Court, in paragraph No.24 of its judgment, observed :-

“24. In Swaran Singh (supra), the Bench of three learned Judges noted that the social need of a victim who is to be compensated had been elucidated as far back as in 1959 by another Bench of three learned Judges of the Supreme Court in *British India General Insurance Co Ltd Vs Captain Itbar Singh and others*, AIR 1959 SC 1331 : (1960) 1 SCR 168 . In the earlier decision, it was emphasised that if the insurer was made to pay something which, under the contract of insurance, he was not bound to pay, it was open to him to recover it from the assured:

"...Secondly, if he has been made to pay something which on the contract of the policy he was not bound to pay, he can under the proviso to sub-section (3) and under sub-section (4) recover it from the assured. It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries..."

(emphasis supplied)

Again, this principle was emphasised in the following observations:

"...The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. ...The right to avoid liability in terms of sub-section (2) of [Section 149](#) is restricted as has been discussed herein before. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading."

(emphasis supplied)

These observations indicate that there are two distinct aspects which have to be borne in mind. The first is the defence which the insurance company is entitled to raise under sub-section (2) of [Section 149](#). The second is that even if the defence is accepted, the Tribunal would have the power to direct the insurer to satisfy the decree in the first instance by permitting recovery of the amount which was paid from the owner. These are two separate issues. The first attaches to the availability of a statutory defence. The second attaches an obligation to pay in the first instance and allows a remedy to recover from the person upon whom the liability has actually fallen. The Supreme Court in its conclusions, held that the liability of the insurance company to satisfy the

decree in the first instance and to recover the awarded amount from the owner or driver had held the field for a long time and the doctrine of stare decisis mandated that it should not be deviated from. However, it was held that a discretion is vested in the Tribunal and the Court so that if a direction is issued to the insurer to pay the amount awarded in the first instance, despite the fact that the insurer had been able to establish that there was a breach of the contract of insurance, the insurer would be entitled to realise the awarded amount from the owner or driver of the vehicle in execution of the award in view of the provisions of [Sections 165](#) and [168](#) of the Act. In this context, the Supreme Court observed thus:

"We may, however, hasten to add that the Tribunal and the Court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of [Section 149](#) of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver and the vehicle, as the case may be, in execution of the same award having regard to the provisions of [Sections 165](#) and [168](#) of the Act."

"25. [Sections 165](#) and [Section 168](#) empower the Tribunal to adjudicate upon all claims in respect of accidents involving death or bodily injury or damage to the property of a third party, arising out of the use of a motor vehicle. This power of the Tribunal is held not only to be restricted to decide claims inter se between the claimant on the one hand, and the insured, insurer and the driver on the

other. In the course of adjudicating the claim for compensation, and while deciding upon the availability of defences to the insurer, the Tribunal has power and jurisdiction to decide disputes inter se between the insurer and the insured. Where the insurer has satisfactorily proved its defence under [Section 149](#) (2), the Tribunal could direct the insurer to be reimbursed by insured for the compensation which it was required to be paid under the authority of the Tribunal. Such a determination would be enforceable and the moneys found due to the insurer from the insured would be recoverable on a certificate issued by the Tribunal to the Collector as arrears of land revenue under [Section 174](#):

"Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of [Section 149](#) (2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under [Section 174](#) of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of [Section 168](#) of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal."

"26. In several decisions of the Supreme Court thereafter, it has been held that where the insurer is

directed to satisfy the award despite the absence of a legal liability, it could be left open to the insurer to initiate a proceeding before the executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue had been decided against owner.”

7. In view of the above, the appeal stands disposed of in terms of the following order :

ORDER

- (i) The amount of compensation granted under the impugned award and deposited by the appellant Insurance Company with this Court be paid to the respondents No.1 to 5 – claimants with interest accrued thereon, immediately.
- (ii) The amount that has been paid by the appellant Insurance Company towards satisfaction of the impugned award shall be recoverable by it from the respondent No.6 – owner of the offending vehicle, with interest thereon @ 6% p.a. from the date of this order to the date of actual payment to the appellant Insurance Company, in an execution proceedings.

**(R. G. AVACHAT)
JUDGE**

fmp/-