IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1176 OF 2012

New India Assurance Company Limited Appellant

Versus

Saherabegum w/o Bhikan Shaikh & others Respondents

Mr. S.G. Chapalgaonkar, Advocate for the appellant.
Mr. S.R. Pande, Advocate for respondent N. 1.

CORAM : M.G. Sewlikar, J.
DATE : 11th February, 2021.

PER COURT :

1. Heard.

2. Learned counsel Shri Chapalgaonkar submitted that the owner of the vehicle had issued a cheque for taking out the policy of his vehicle i.e. Car bearing registration No. MH 20 Y 6391. The policy was issued on 17.11.2007 in view of the cheque dated 17.11.2007. However, the cheque was dishonoured. Therefore, the insurance company i.e. the appellant herein issued notice of cancellation of policy on 18.01.2008. The said notice was issued by R.P.A.D. The said notice could not be served on the owner/insured on account of insufficient address. The date of endorsement by the postal authority is not known.

3. The insured vehicle met with an accident on 13.02.2008 resulting into injury to the respondent No.1.

4. Respondent No. 1 preferred application for compensation before the learned Member, Motor Accident Claim Tribunal, Aurangabad vide MACP No. 758/2009. The said application was allowed by the learned Tribunal holding that the notice of cancellation of policy on account of dishonour of the cheque was not served on the owner/insured. Therefore, the learned Tribunal awarded compensation to the respondent No. 1.

5. Learned counsel Shri Chapalgaonkar submitted that the learned Tribunal did not pass any order as regards recovery of the amount of compensation from the owner as the policy was cancelled on account of dishonour of cheque. He submitted that in view of the judgment of the Honourable Apex Court in the case of United India Insurance Company Limited vs. Laxmamma and others reported In **(2012) 5 Supreme Court Cases 234**, the Tribunal ought to have passed the order of recovery of amount from the owner without initiating separate proceedings.

6. In the case referred to above, similar issue had arisen. The insurance company was held to be not entitled to absolve itself from the liability to pay compensation. However, the insurance company was permitted to prosecute the remedy to recover the amount paid to the claimants from the insured.

7. In view of this, this Court directs that the insurance company- appellant herein is at liberty to prosecute the remedy to recover the amount paid to the claimants from the insured/owner. The amount deposited alongwith accrued interest be paid to the claimants. Award to that extent is modified.

8. Appeal stands disposed of in above terms. Pending civil applications, if any, stand disposed of.

(M. G. SEWLIKAR)
JUDGE

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