

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

**FIRST APPEAL NO. 2358 OF 2018
(WOMEN'S COMPENSATION ACT)**

1. Smt. Chanda w/o Bhagwan Jagtap
Age 30 years, Occu: Labour
R/o Panchashil Nagar, Vaijapur,
District Aurangabad
2. Ku. Prashant s/o Bhagwa Jagtap, ... Appellants
Age 9 years, Occu: Education
3. Ku. Pritee d/o Bhagwan Gajtap,
Age 7 years, Occu: Education
4. Ku. Prem s/o Bhagwan Jagtap
Age 5 years, Occu: Education, No. 2 to 4 are
under Natural Guardian of Appellant No.1-
Smt. Chanda w/o Bhagwan Jagtap
5. Mandabai Jagtap
Age 64 years,
R/o Post Borsar Tq. Vaijapur Dist. Aurangabad

VERSUS

1. Deleted.
2. Kishor Bhagwan Tejli,
Age Major, Occu: Business, R/o R.H.No.3031,
Chowk,Mandai,W.No.41/1 Nasik
3. Divisional Manager, ... Respondents.
Bajaj Aillianz General Insurance Co.,
Adalat Road, Aurangabad.

Mr. S. V. Kulkarni, Advocate for the appellants
Mr. S. G. Chapalgaonkar, Advocate for respondent No.3.

CORAM : S. G. DIGE, J.
RESERVED ON : 12.08.2022
PRONOUNCED ON : 07.10.2022

JUDGMENT:

1. Challenge in this appeal is to cancellation of insurance policy due to dishonour of cheque which was paid as premium of policy.

2. It is the contention of the learned counsel for the appellants that the appellants/original claimants had filed a claim petition under the Employees Compensation Act for compensation against the vehicle owner and Insurance company. The Commissioner for WCA and Judge, Labour Court (II), Aurangabad has partly allowed the claim petition. The claim against the respondent-Insurance company is dismissed on the ground that there was no valid and effective insurance policy of the offending vehicle on the date of accident. The premium was paid through cheque but it was dishonoured. Dishonour of cheque can't be a ground to cancel the insurance policy. Hence, requested to allow the appeal.

3. The learned counsel for the appellants submits that no intimation was given to the RTO along-with postal acknowledgment, about cancellation of Insurance policy. Therefore, the insurance policy is not duly cancelled. Risk of the vehicle is covered under the policy, as the insurance policy is not cancelled as per law. Even if the policy is cancelled, the insurance company is liable to pay compensation and may recover the compensation from the vehicle owner. The learned counsel for the appellants relied on (1) **Eknath Shantaram Kunkolienkar & another Vs. Anthony Fernandes & Anr. [2011 Goa L.R. 754 (Bom)]**

and the Oriental Insurance Company Ltd. Vs. Gitabai wd/o Bhaskar Brahmane & ors. [2013 A.C. 437 (Bom.)].

4. It is the contention of learned counsel for the respondent No.3- Insurance Company that the Insurance company had cancelled the policy long before the date of accident. The cheque, by which the premium was paid in respect of the policy was dishonoured. The Insurance company cancelled the policy on 23rd August, 2014. The accident took place on 13th May, 2015. The insurance company had informed about the cancellation of policy to the owner of vehicle i.e. respondent No.2 and R.T.O. Hence, the order passed by the Tribunal is legal and valid. The learned counsel for the respondent Insurance company relied on **Deddappa & Ors. Vs. Branch Manager, National Insurance Co. Ltd., 2008 (1) All MR 968.**

5. I have heard both learned counsel. Perused the judgment and order passed by the Tribunal.

6. The Tribunal has dismissed the claim petition against the Insurance company on the ground that the cheque by which the premium was paid was dishonoured, hence the insurance policy was cancelled. The said fact was communicated to the owner of the vehicle (Respondent No.2) and the RTO. The respondent Insurance company, to prove cancellation of the policy, has examined their officer Chinmay Joshi at Exh. C-30. He has stated that against Policy No.0415-2003-1803-00000868, the Company received a Cheque of Abhyudaya Bank

of Rs.25,276/- as a premium from respondent No.2 to insure Vehicle Reg. No.MH-04-CP-7187 (offending vehicle). The said cheque was submitted for encashment but it was returned back from the Bank with remark 'fund insufficient'. The Insurance company had sent letter to Kishor Bhagwan Tejli-owner on 23rd August, 2014 stating that the cheque issued by him has been dishonoured and the policy stands cancelled, *void ab initio* from the beginning of the coverage period. It is further stated by this witness that the said letter is received by respondent No.2 owner on 3rd September, 2014. There is one condition in the policy certificate which states that " if premium is paid through cheque, the policy is *void ab initio* in case of dishonor of cheque". Thereafter, the insurance company had also sent letter dated 23rd August, 20014 to the Regional Transport Authority intimating them that the contract of insurance vide Insurance Policy No.0415-2003-1803-00000868 between the Insurance company and respondent No.2 is *void ab initio* in view of cheque dishonour.

7. Nothing elicited in the cross examination of this witness. The dishonoured cheque is at Exh.C-17. Postal acknowledgment receipts are at Exh. 21 and 22. From the evidence of this witness it reveals that the policy is cancelled on 23rd August, 2014 whereas the accident is occurred on 13th May, 2015. Almost after 10 months of the intimation given to the respondent No.2-owner of the vehicle about cancellation of policy, the accident is occurred. Hence, it cannot be said

that the offending vehicle was insured with the insurance company at the time of accident.

8. The Hon'ble Apex Court, in the case of **Deddappa & Ors.** (supra), has held that if the contract of insurance has been cancelled and all concerned have been intimated thereabout, Insurance company would not be liable to satisfy the claim. The facts of the said case are squarely applicable to the present case.

9. In view of the above, I pass following order:

O R D E R

The first appeal is dismissed. No order as to costs.

(S. G. DIGE, J.)

JPChavan