IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.440 OF 2007

United India Insurance Co.Ltd;
Through it's Divisional Manager and
authorised representative and signatory,
Ahmednagar Divisional Office, Kisan Kranti
Building, Ahmednagar, Dist. Ahmednagar. **... APPELLANT /**
(Ori.opp.No.2)

VERSUS

1. Balasaheb Kisanrao Lokhande, **...RESPONDENTS**
Age : 40 years, Occ. Agri. and Milk (Res.No.1 -Ori.Claimant
Business, R/o Dev-Daithan, Tal. and Res. No.2 & 3 -ori.
Shrigonda, Dist. Ahmednagar, Opp.No. 1 & 3)

2. Sajid Hussain,
Age Major, Occu. Business, R/o
Old Kurla, Near Mini Macchi
Market, M. N. Road, Sonapur
galli, Patel Poltry Farm, Bombay.
(Owner of Tempo No.MH-04/3/5889)

3. Shaikh Abdul Majid,
Age 25 years, Occ. Driver,
R/o Old Kurla, Near Mini Machhi
Market, M.N. Road, Sonapur galli,
Patel Poltry Farm, Bombay.
(Driver of Tempo No.MH-04/3/5889)

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Advocate for the Appellant : Mr. A. B. Gatne
Advocate for Respondent No.1 : Mr. Pushpak U. Gujrathi h/f.
Mr. V. P. Latange
Advocate for Respondent Nos. 2 and 3 : dismissed vide order dtd.15.07.2014.

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 24.08.2022

PRONOUNCED ON : 23.09.2022

JUDGMENT:

1. The Appellant – Insurance Company, who is the original opponent No. 2 in Motor Accident Claims Petition No. 6/1998, has challenged the judgment and award in the aforesaid claim petition passed on 20.04.2005 by the learned Member, Motor Accident Claims Tribunal, Ahmednagar (hereinafter referred to as 'the learned Tribunal') on the ground that the learned Tribunal wrongly cast liability on it to pay the compensation amount to the original claimant, who is present respondent No.1.

2. It is not disputed that respondent No.1 i.e. the original claimant on 18.01.1997 was going to Ahmednagar from Pune in tanker bearing No. MH/12R-9005 and at that time the offending tempo owned by present respondent No.2 gave dash to the said tanker from the opposite direction and caused the accident. Respondent No.1 – original claimant, since got injured and sustained permanent disability, asked for compensation of Rs. 1,00,000/-. The learned Tribunal has granted compensation amount of Rs. 49,000/- inclusive 'No Fault Liability' amount along with the future interest at the rate of 9 % per annum from the date of petition till its realization. It is significant to note that the appellant – Insurance Company has not disputed the computation part, but came out with the case that the

cheque for drawing insurance policy in respect of the tanker was dishonoured and therefore, the insurance policy was cancelled by the Insurance Company well prior to the date of accident. With these contentions, the appellant -Insurance Company is before this Court.

3. The learned counsel for the appellant – Insurance Company vehemently argued that though the learned Tribunal held the Insurance Company liable for paying the compensation in the light of observations of Hon'ble Apex Court in the cases of (1)*Oriental Insurance Co. Ltd. vs. Inderjit Kaur and others, AIR 1988 Supreme Court 588, (2) New India Assurance Co. Ltd. vs. Rula and others, AIR 2000 Supreme Court, 1082,* however, the cheque dtd. 15.02.1996 issued by the insured towards the premium got dishonoure and therefore, the Company immediately on 01.03.1996 informed the insured and RTO that the insurance policy was cancelled due to dishonour of cheque of premium. He further submits that the accident took place much after the said intimation i.e. on 18.01.1997 and therefore, there was no contract of insurance between the Company and the owner of offending vehicle on the date of accident.

4. On the contrary, the learned counsel for the original claimant i.e. present respondent No. 1 supported the impugned judgment and

award and continued his reliance on the aforesaid judgments of Hon'ble Supreme Court. The appeal has been dismissed against respondent Nos. 2 and 3, who are respective owner and driver of the offending tempo No.MH/04/3/5889.

5. With the assistance of rival learned counsel, I have gone through the impugned Judgment and award and the entire oral and documentary evidence on record.

6. It is important to note that the appellant -Insurance Company has filed this appeal only on the ground that since the cheque of premium in respect of the policy regarding offending vehicle was dishonoured and it was also intimated to the insured i.e. present respondent No.2, who is owner of the offending tempo well prior to the date of accident, then there cannot be any liability for the appellant -Insurance Company to satisfy the award.

7. On going through the aforesaid judgments, it is evident that the Hon'ble Supreme Court in the case of ***Inderjit Kaur*** (supra), has observed that insurer issuing policy to cover bus without receiving premium becomes liable to indemnify third parties in respect of liability which policy covers and in view of the Provisions of S.64-VB

of Insurance Act, the insurer cannot be absolved from its liability to pay compensation to the third parties. Likewise, the Hon'ble Apex Court in the case of ***Rula and others*** (supra) has observed as follows :

> *"If, on the date of accident, there was a Policy of Insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of Insurance Policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party."*

8. The learned counsel for the appellant – Insurance Company, thus, tried to argue that in both the aforesaid judgments the appellant -Insurance Policy had cancelled the policy subsequent to the accident and therefore, the aforesaid observations of Hon'ble Apex Court are not applicable in the instant case. He pointed out the dates and submitted that the policy of the offending vehicle was cancelled much prior to the date of accident which admittedly occurred on 18.01.1997 and therefore, the learned Tribunal has drawn wrong inferences by placing reliance of the observations of Hon'ble Supreme Court in the aforesaid judgments. He pointed out that the learned Tribunal should have exonerated the appellant -Insurance Company totally, since there was no contract of insurance on the date of

accident, and thus no rights of the third parties were crystallized at the relevant time against the appellant -Insurance Company.

9. On going through the aforesaid judgments, it appears that in both the cases, the insurance policy was cancelled after the accident but in the instant case, the appellant -Insurance Company is claiming that the policy was cancelled well in advance and much prior to the date of incident, and therefore, there cannot be any fixation of liability of any compensation on it. However, the Hon'ble Supreme Court in the judgment reported in the case of ***United India Insurance Company Limited Vs. Laxmamma and others, (2012) 5 SCC 234***, has made following observations :

> "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.

27. Having regard to the above legal position, insofar as the facts of the present case are concerned, the owner of the bus obtained the policy of insurance from the insurer for the period 16-4-2004 to 15-4-2005 for which premium was paid through cheque on 14-4-2004. The accident occurred on 11-5-2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13-05-2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on 21-5-2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy the award of compensation passed in favour of the claimants.

28. In view of the above, the judgment of the High Court impugned in the appeal does not call for any interference. The civil appeal is dismissed. However, the insurer shall be at liberty to prosecute its remedy to recover the amount paid to the claimants from the insured. No order as to costs."

10. On going through the aforesaid observations, it appears that the

Hon'ble Supreme Court has clarified the legal position and held that the liability of Insurance Company to indemnify the third parties under the policy continues in view of the provisions of Section 147(5) and 149(1) of the Motor Vehicle Act, unless the Policy of Insurance is cancelled on dishonour of cheque of premium and intimation of such cancellation has reached the insured before the accident. Thus, in the light of new position set out by the Hon'ble Supreme Court, it can be stated that the Insurance Company after the dishonour of cheque of premium has to cancel the policy prior to the accident and the intimation thereof must reach the insured, i.e. the owner of offending vehicle prior to the occurrence of accident. Unless both these conditions are satisfied, the Insurance Company cannot be absolved from its liability towards the third parties.

11. In the present case the appellant -Insurance Company, though the insurance policy was issued on 15.02.1996 till 14.02.1997 on the basis of cheque of premium dated 15.02.1996, but as soon as the said cheque got dishonoured, the Company immediately on 01.03.1996 had informed the insured and RTO that the insurance policy was cancelled due to dishonour of cheque of premium. Admittedly, the accident in the instant case had taken place much after such cancellation i.e. on 18.01.1997. However, it is extremely important to note that the appellant -Insurance Company has not led any evidence

to show that the cheque was dishonoured and it had intimated the insured about the cancellation of insurance policy. It is further important to note that the appellant -Insurance Company appears to have filed certain letters on record to support its aforesaid contention. However, the appellant -Insurance Company has miserably failed to examine any witness thereof, to establish the fact that cancellation of policy was intimated to the insurer i.e. the owner of offending tempo well prior to the date of accident. Under such circumstances, it appears that the appellant – Insurance Company has failed to establish both the criteria as laid down by the Hon'ble Supreme Court in the case of ***United Insurance Company Limited Vs. Laxmamma and others*** *(supra).*

12. In view of the above discussion, I found no substance in the appeal and the same is hereby dismissed and disposed of accordingly.

(SANDIPKUMAR C. MORE)
JUDGE

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