Ghuge

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2510 OF 2011

Gurumit Singh Harbhajan Singh … Appellant
V/s.
Vasan Singh Pal Singh and Anr … Respondents

Mr. T.J. Mandon for the appellant.
Mr. Sandeep Jinsiwale for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 2, 2023

P.C.:

1. The appeal arises out of Judgment and Award dated 6th June, 2009 passed by Commissioner for Workmen's 1st Labour Court, Mumbai in an Application (WCA) 515/C-101/1997.

2. Facts giving rise to the appeal are as under :-

The appellant is original applicant who had filed application under the provisions of Workmen Compensation Act, 1923 contending that while applicant was driving a vehicle belonging to opponent No.1, he met with an accident resulting into injury. On the date of accident the applicant was aged 22 years. It is contended that he is earning salary of Rs.2,500/- (Rupees Two Thousand Five Hundred Only) per month. Due to said accident he was admitted to LTMG Hospital on 20th January, 1997 and was discharged on 23rd January, 1997 it resulted 100% loss of earning.

As he was permanently disabled from continue with his occupation as a driver. He, claimed compensation of Rs.2,65,000/- (Rupees Two Lakh Sixty Five Thousand Only) under Schedule 4 of Workmen Compensation Act, 1923.

3. The opponent No.1 failed to remain present despite service.

4. Insurer contested the claim by submitting that on the date of accident the policy was not in force. The vehicle was not insured on the date of accident, as the cheque dated 29th November, 1996 for Rs.8,544/- (Rupees Eight Thousand Five Hundred and Forty Four Rupees) was dishonored before the date of accident.

5. The learned Trial Court based on pleadings framed necessary issues and exonerated insurance company by holding that policy had been cancelled before occurrence of accident. The learned Trial Court directed the opponent No.1 employer to pay compensation of Rs.2,65,000/- (Rupees Two Lakh Sixty Five Thousand Only) along with interest at the rate of 12% from the date of adjudication. Aggrieved thereby the claimant has filed present appeal challenging exoneration of insurance company and direction of payment of interest from the date of adjudication instead of date of accident.

6. Learned advocate for the appellant relying on Judgment of Division Bench of Calcutta High Court in the case of **Madhabi Maity Vs. Union of India Insurance Co. Ltd and another** reported in 2010 ACJ 1622, submitted that the principle of communication of cancellation of policy to the insurer would apply to Workmen Compensation Act, 1923. Relying on the judgment of Apex Court in the Case of **Oriental Insurance Co. Ltd Vs. Siby George and others** reported in 2012 ACJ 2126, it is submitted that interest on compensation under Section 4A needs to be granted from the date of incident.

7. Learned advocate for the Insurance Company *per contra,* submitted that the scheme of Motor Vehicles Act, 1988 is different than the scheme of Workmen Compensation Act, 1923. Under Motor Vehicles Act, 1988 the claim is made by third party. However, in case of Workmen Compensation Act, 1923 the claim is made by driver who is employee of employer. Cancellation of policy by insurance company is within the knowledge of employee. He therefore submits that it not necessary to communicate cancellation of insurance policy to the insurer.

8. Rival contentions call for consideration.

9. The dates of relevant for adjudication are as under :-

I) 22/11/1996 : the employer issued cheque for renewal of insurance.

II) 22/11/1996 : Insurance Company issued cover note of Insurance Company which was valid from 22/11/1996.

III) 28/11/1996 : the cheque issued by employer towards payment of premium dishonored.

IV) 29/11/1996 : According to Insurance Company the policy was cancelled.

V) 19/01/1997 : accident in question occurred.

10. In the case of **Oriental Insurance Co. Ltd. Vs. Indrajit Kaur and others** reported in 1998 ACJ 123 considering provisions of Section 146 and 149 of Motor Vehicles Act, 1988 it is observed that the policy of insurance was issued only after receipt of cheque of premium in contravention of Section 64-VB(1) of the Insurance Act, 1938 therefore, the Insurance Company was responsible for its predicament. It is observed that in public interest policy of insurance must clearly prevail over the interest of Insurance Company.

11. The Division Bench of the Calcutta High Court in **Madhabi Maity** (supra) and considering the judgment in case of **Indrajit Kaur** (supra) as held in paragraph No.16 as under :-

> "16. Therefore, the long and short of the principles laid down by the Supreme Court in all those decisions is that if the insurance company at its risk issues a cover note, which is equivalent to the issue of policy without ascertaining whether the cheque itself taken from from the insured as a consideration of insurance would be ultimately honored or not, it would be its liability honored or not, it would be its liability to make payment of compensation, if any accident occurs before insurance company communicates its decision of cancellation of the policy of the insured."

12. I am in respectful agreement with a view taken by Division Bench of Calcutta High Court in the case of **Madhabi Maity** (supra).

13. The argument on behalf of the insurance company that the third party is contemplated under Motor Vehicle Act is different from driver/employee as the employee has constructive knowledge of breach of policy cannot be accepted. The reasoning for not accepting submission is Section 64-VB of Insurance Company Act, 1938. Considering which the Apex Court held that, issuance of policy on receipt of cheque without waiting it to be honored amounts to violation of Section 65-VB and therefore, Insurance Company is liable for such predicament. Reasons weighed with the Apex Court is breach of Section 65-VB therefore, rational for imposition of compensation on Insurance Company cannot be distinguished based on provisions of Workmen Compensation Act, 1923.

14. I am therefore, satisfied that the learned Trial Court could not have absolved Insurance Company from is liabilities incurred by Insurance Company by issuance of cover note. The Insurance Company must therefore, held to be liable jointly and severally with an employer.

15. In so far as grant of interest under Section 4 of Workman Compensation Act, 1923 is concerned, the said issue is no longer *res integra* in view of judgment of Apex Court in the Case of **Oriental Insurance Co. Ltd** (supra) wherein the Apex Court has held that the interest on compensation needs to be paid from the date of accident.

16. For the reasons the Judgment and Award passed by Commissioner for Workmen's 1st Labour Court, Mumbai in Application (WCA) 515/C-101/1997 stands modified.

17. The opponent No.1 and 2 are jointly and severally held liable to pay compensation of Rs.2,65,644/- (Rupees Two Lakh Sixty Five Thousand Six Hundred and Forty Four Only) along with interest at the rate of 12% per annum from the date of accident.

18. It is made clear that the payment of compensation by the Insurance Company can be recovered from owner/employer.

19. The First Appeal shall stands allowed in the above terms. No costs.

(AMIT BORKAR, J.)