IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1299 of 2020

Cholamandalam MS General Insurance Co. Ltd.,
Rep. By its Manager,
2nd Floor, Dare House,
No.2, NSC Bose Road,
Chennai-1.

...Appellant

versus

1. Venkatesan

2. Ellammal

3. The Correspondent
Rajiv Gandhi College of Education,
RIMS Matriculation School,
Samathuvapuram Near,
Kammampalli Post,
Kuppan Road,
Krishnagiri Taluk and District. .... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 12.11.2018 and made in MCOP. No.588 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

For appellant : Mr.E.Rajadurai
For M/s.M.B.Gopalan Associates
For Respondents : Mr.K.Dillibabu R3
M/s.S.P.Yuvaraj RR1 & 2

JUDGMENT

The Insurance Company has come forward with the appeal as against the judgment and decree dated 12.11.2018 and made in MCOP. No.588 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

2. It is the case of the appellant that on 20.02.2016 at about 04.15 pm when the deceased Mani and other school children were walking inside the school campus, at that time, the school bus driven by its driver bearing Reg. No.TN 24 K 6030 belonging to the third respondent and insured with the appellant, which came riverse in high speed, dashed against the said Mani and one Nagavalli, due to which, the deceased Mani sustained grievous injures and immediately, he was taken to the hospital and he died on the way to the hospital. Thereafter, the claimants have filed claim petition before the Motor Accidents Claims Tribunal claiming compensation of Rs.30,00,000/-. The Tribunal considering the pleadings, oral and documentary evidence, passed award of

Rs.18,74,400/- in favour of the claimants. Aggrieved over the same, the insurance company has come forward with this appeal on the ground of liability.

3.The learned counsel appearing for the appellant Insurance company submitted that the Tribunal has erred in holding the appellant liable to pay the compensation where it has been proved that no premium was paid by the owner of the vehicle for the insurance and cheque issued towards the premium had been dishonoured. Without considering the entire fact, the Tribunal has fixed entire liability as against the appellant, which is not sustainable one.

4. In support of the aforesaid submissions, learned counsel appearing for the appellant placed reliance on the following decisions :-

Deddappa & Ors. – National Insurance Co. Ltd. (2008 (2) TN MAC 138 (SC));

United India Insurance co. Ltd. – Vs – Laxmamma & Ors. (2012 (1) TN MAC 481 (SC));

New India Assurance Co. Ltd. – Vs – Tara Devi & Ors. (2016 (2) TN MAC 520 (SC));

IFFCO-TOKIO Gen. Insurance Co. – Vs – Shanas (2021 (2) TN MAC 28 (DB));

Prasanna B – Vs – Kabeer & Anr. (2019 (1) TN MAC 274 (FB) (Ker.));
United India Insurance Co. Ltd. – Vs – Golla Nattala Gopal & Ors. (2016 (1) TN MAC 557 (Hyd.);
National Insurance Co. – Vs – Kothai Nayaki & Ors. (2023 (1) TN MAC 646 (DB)

5. Without prejudice to the aforesaid contention, it is the submission of the learned counsel that the compensation awarded on various heads is grossly high and that the percentage towards future prospects have also not been properly computed.

6. Per contra, learned counsel appearing for the claimants submitted that the Tribunal had rightly appreciated the decisions in line with the facts of the present case and had come to the conclusion that the benevolent provision u/s 147 (5) and 149 (1) of the Motor Vehicles Act should be construed leniently in favour of the third party and Section 64 VB of the Motor Vehicles Act should not be made to erode the benevolent legislation and had, therefore, directed the appellant to make good the compensation to the claimants and to recover the same from the insured/owner of the vehicle, which is just and reasonable and, therefore, no interference is warranted with the said finding.

7. The third respondent is the insured/owner of the vehicle, who was set ex-parte before the Tribunal. Even before this Court, inspite of notice, the third respondent had not turned up to contest the case.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record and also the various decisions relied on by the learned counsel for the appellant.

9. The main grievance put forth before this Court on behalf of the insurer is that the order directing payment of compensation to the claimants is wholly erroneous, as on the date of the accident, viz., 20.02.2016, there was no policy subsisting in the eye of law, as the policy, which was issued by receiving the cheque was cancelled subsequently due to dishonour of the cheque and communication with regard to the cancellation of the policy had been given to the insured/third respondent and the Regional Transport Officer.

10. As aforesaid, the third respondent/insured, had remained ex

parte before the Tribunal as also before this Court. In the light of the above factual position, this Court, based on the various legal precedents on the subject is to look at the issue to arrive at a decision as to the acceptability of the order passed by the Tribunal.

11. There is no quarrel with the fact that the cheque dated 26.06.2015 was issued by the third respondent towards premium of the policy. However, the said coverage is subject to the realisation of the cheque, which goes without saying, as it is a contract of insurance entered into between the insurer and the insured and, thereby, the conditions of contract has to be fulfilled by both the parties to the contract.

12. In the aforesaid backdrop, the facts of the case reveal that the cheque dated 26.06.2015, issued towards coverage of risk, stood dishonoured, which was communicated by the insurer's banker on 30.06.2015 and, in turn, the insurer, on even date, cancelled the policy and communicated the same to the third respondent/insured and received the acknowledgment with endorsement "received". Further, the appellant/insurer had also communicated the cancellation of the policy to

the Regional Transport Officer. However, the accident had taken place on 20.02.2016, after a period of about six months from the date of cancellation of the policy. The Tribunal, on the basis of the decision in ***Oriental Insurance Co. Ltd. – Vs – Mophammed Hussain & Anr. (2009 AC 2468)***, had ordered payment of compensation by the appellant/insurer.

13. Placing reliance on the decision in ***Oriental Insurance Co. Ltd. – Vs – Inderjit Kaur & Ors. (1998 (1) SCC 371)***, it is contended on behalf of the claimants that the order of the Tribunal is just and reasonable.

14. In *Inderjit Kaur case,* the Apex Court had occasion to consider Section 64-VB vis-a-vis Sections 147 (5) and 149 (1) and in that context held as under :-

> *"9. We have, therefore, this position. Despite the bar created by Section 64-VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium therefor. By reason of the provisions of Section 147(5) and 149(1) of the Motor Vehicles Act , the appellant became liable*

> *to identify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured."*

15. There could be no quarrel with the fact that it is the duty of the insurer to indemnify the third parties upon issuance of a policy with regard to the vehicle, which is covered by the terms of the policy. However, it is to be pointed out that the coverage would subsist only if the contract is honoured by the insured as well. If the premium due towards the said policy is not paid and the cheque, which is given in pursuance thereof, stands dishonoured, then a duty is cast on the insurer that while cancelling the policy to communicate the dishonour of the cheque to the insured so as to enable the insured to pay the amount to have the policy renewed/revived. The above communication is put to the insured only to see to it that the coverage continues and the vehicle is covered so that the third parties, who suffer any accident on account of the said vehicle, would be in a position to receive the compensation for the loss suffered.

16. The law of contracts, which is the guiding factor in insurance claims, has been succinctly dealt with by the Apex Court in the case of ***Deddappa & Ors. – Vs – The Branch Manager, National Insurance Co. Ltd. (2008 (2) TN MAC 138 (SC))***, wherein, in case of cheque dishonour in the case of policies which cover the vehicle, the liability being contractual in nature, the Apex Court has held as under:-

> *17. We may, however, notice that in terms of sub-section (5) of Section 147 and sub-section (1) of Section 149 of the Act, the Insurance Company became liable to satisfy awards of compensation in respect thereof, notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued for payment of premium thereon had not been honoured.*
>
> *18. The said question, however, was left open in Inderjit Kaur (supra).*
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> * * * * * * *
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> *21. Almost an identical question again came up for consideration before this Court in National Insurance Co. Ltd. v. Seema Malhotra and Ors. [(2001) 3 SCC 151], a Division Bench noticed both the aforementioned decisions and analysed the same in the light of Section 64-VB of the 1938 Act. It was held :*

"17. <u>In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise</u>. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.

18. <u>Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation</u>.

19. <u>Under Section 25 of the Contract Act an agreement made without consideration is void. Section 65 of the Contract Act says that when a contract becomes void any person who has received any advantage</u>

under such contract is bound to restore it to the person from whom he received it. So, even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured, the insurer is entitled to get the money back.

20. However, if the insured makes up the premium even after the cheque was dishonoured but before the date of accident it would be a different case as payment of consideration can be treated as paid in the order in which the nature of transaction required it. As such an event did not happen in this case, the Insurance Company is legally justified in refusing to pay the amount claimed by the respondents".

22. A contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedents for a valid contract. A contract furthermore must be for consideration.

23. In today's world payment made by cheque is ordinarily accepted as valid tender. Section 64VB of the 1938 Act also provides for such a scheme.

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25. Recently again in New India Assurance Co.

Ltd. v. Harshadbhai Amrutbhai Modhiya and Anr. [(2006) 5 SCC 192], although in the context of the Workmen Compensation Act, 1923, Balasubramanyan, J opined :

"It is not brought to our notice that there is any other law enacted which stands in the way of an insurance company and the insured entering into a contract confining the obligation of the insurance company to indemnify to a particular head or to a particular amount when it relates to a claim for compensation to a third party arising under the Workmen's Compensation Act. In this situation, the obligation of the insurance company clearly stands limited and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. Unlike the scheme of the Motor Vehicles Act the Workmen's Compensation Act does not confer a right on the claimant for compensation under that Act to claim the payment of compensation in its entirety from the insurer himself".

It was further observed:-

"The law relating to contracts of insurance is part of the general law of

contract. So said Roskill, L.J. in Cehave v. Bremer. This view was approved by Lord Wilberforce in Reardon Smith v. Hansen-Tangen (All ER p. 576 h) wherein he said:

"It is desirable that the same legal principles should apply to the law of contract as a whole and that different legal principles should not apply to different branches of that law."

A contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense. (See Colinvaux's Law of Insurance , 7th Edn., para 2-01.) A policy of insurance has therefore to be construed like any other contract. On a construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay among other things under the Workmen's Compensation Act. Unless one is in a position to void the exclusion clause concerning liability for interest and penalty *imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts.""*

26. We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-`-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. <u>But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim</u>."

(Emphasis Supplied)

17. From the above ratio laid down by the Apex Court, it crystallises that the contract of insurance is a reciprocal promise, which is to be performed by the insurer only on the insured performing his part of the promise. True it is that a cheque had been issued by the insured, which, in good faith, had been received by the insurer and a policy has been issued, wherein certain promises are given. But the said promises

could be kept up only when the insured keeps up his part of the promise, thereby, the cheque gets honoured. However, the dishonour of the cheque, would absolve the insurer of all the liabilities to which, otherwise, the insurer would be bound to perform.

18. As pointed out by the apex Court, once the cheque issued by the insured is dishonoured by the bank concerned, the insurer need not perform his part of the promise and the no claim can be maintained against the insurer in such a situation. The policy of insurance, being a contract, as provided for u/s 25 of the Contract Act, the agreement becomes void on the insured not paying the consideration. Therefore, the liabilities arising under a contract of insurance would have to be met if the contract is valid and if the contract of insurance has been cancelled and all concerned have been intimated, the insurance company would not be liable to satisfy the claim.

19. From the above, it is manifestly clear that the ratio laid down in *Deddappa case* has not been the point of consideration in *Inderjit Kaur case*, though in *Inderjit Kaur,* the Apex Court had held that it is the duty of the insurer to indemnify the third parties. However, the larger

issue had not been considered in *Inderjit Kaur case*, which has subsequently been discussed in *Deddappa case*.

20. Following the steps in *Deddappa case,* the Apex Court in *Laxmamma case* had occasion to consider a similar issue and making a threadbare discussion by taking into account *Deddappa, Inderjit Kaur case* and ***New India Assurance Co. Ltd. – Vs – Rula & Ors. (2000 (3) SCC 195)***, which has also been considered in *Deddappa case*, the Supreme Court postulated the legal position in the following manner :-

> *"18. We find it hard to accept the submission of the learned Counsel for the insurer that the three-Judge Bench decision in Inderjit Kaur MANU/SC/0842/1998 : (1998) 1 SCC 371 has been diluted by the subsequent decisions in Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151 and Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595. Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151 and Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595 turned on the facts obtaining therein. In the case of Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151, the claim was by the legal heirs of the insured for the damage to the insured vehicle. In this peculiar fact situation, the Court*

held that when the cheque for premium returned dishonoured, the insurer was not obligated to perform its part of the promise. Insofar as Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595 is concerned, that was a case where the accident of the vehicle occurred after the insurance policy had already been cancelled by the insurance company.

19. In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized 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 authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored 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.*"

(Emphasis Supplied)

21. From the above ratio laid down, it clearly transpires that where the cheque gets dishonoured and before the accident of the vehicle occurs, the insurance company cancels the policy of insurance and sends intimation to the owner and the Regional Transport Officer, 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. Therefore, once the cancellation of the policy is made and intimation is sent to the insured, the liability of the insurance company ceases.

22. In the case on hand, the cheque, as aforesaid, was dishonoured on 30.06.2015 and the same was intimated to the insured and acknowledgment. The accident had taken place only on 20.02.2016, much after seven months from the date of cancellation of the policy and,

therefore, the insurance company cannot be fastened with liability to pay the compensation.

23. Though very many decisions of the Apex Court as also the Division Bench of this Court and other High Courts have been relied upon by the appellants, however, this Court is not multiplying the authorities, as they propound the very same ratio, which has been laid down above in *Deddappa* and *Laxmamma case.* Therefore, this Court is refraining itself from making any reference to the said decisions.

24. However, without adverting to the ratio laid down in the aforesaid decisions in proper perspective, the Tribunal had erred in ordering payment of compensation by the appellant, by adverting to a decision, which is not applicable to the facts of the present case. Therefore, the order passed by the Tribunal with regard to liability is set aside.

25. Accordingly, the appeal is allowed of with the following directions:

(i) The quantum of compensation awarded by the Tribunal is confirmed;

(ii) the appellant is directed to deposit the entire compensation in the credit of the MCOP before the Tribunal as awarded by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realization, within a period of four weeks from the date of receipt of a copy of this order.

(iii) Thereafter, the Insurance Company shall recover the said award amount along with interest from the third respondent, who is the owner of the bus;and

(iv) On such deposit being made, the Tribunal is directed to transfer the amount as per the permissible apportionment to the bank account of the claimants through RTGS within a period of two weeks thereafter. There shall be no order as to costs in these appeal.

12.12.2023

Index : Yes/no
RLI

<u>To</u>
The Judge,

The Motor Accident Claims Tribunal,

Special District Court, Krishnagiri.

M.DHANDAPANI.,J.

RLI

<u>C.M.A.No.1299 of 2020</u>

<u>12.12.2023</u>