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C.M.A. Nos.4449/2019 – 1928/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
13.12.2023	22.12.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NOS.4449 OF 2019 & 1928 OF 2020

AND

C.M.P. NO.14229 OF 2020

1. Gowramma
2. Minor Sachin
3. S.Venkatasamy .. Appellant in CMA
4449/2019
(Minor A-2 rep. By mother &
Natural guardian, A-1)

The Branch Manager
M/s.Reliance General Insurance Co. Ltd.
Reliance House, 6th Floor, No.6
Haddows Road, Chetpet
Chennai – 6. .. Appellant in CMA 1928/2020

- Vs -

1. Shri Nataraj Tyres
No.6, Adhiyaman Auto Nagar
Krishnagiri Main Road
Gundalapatti, Dharmapuri Taluk.
2. Reliance General Insurance Co. Ltd.
Rep. By its Branch Manager



C.M.A. Nos.4449/2019 – 1928/2020

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Sri Lakshmi Complex
1st Floor, Bharathi Street
Omalur Main Road, Swarnapuri
Salem 636 004.

3. S.Venkatesh

4. Oriental Insurance Co. Ltd.
Division Office – VI
Srinivasa Mansion
No.364/1, 10th B Main Road
III Block, Jayanagar
Bangalore 560 011.
4449/2019

.. Respondents in CMA

1. B.Deepa
2. Minor Sachin
3. Saminathan
4. S.Kala

.. Respondents in CMA 1928/2020

C.M.A. No.4449 of 2019 filed u/s 173 of the Motor Vehicles Act against the order and decretal order dated 31.07.2015 made in M.C.O.P. No.1312 of 2008 on the file of the Motor Accident Claims Tribunal, Addl. District Judge, Krishnagiri.

C.M.A. No.1928 of 2020 filed u/s 173 of the Motor Vehicles Act against the order and decretal order dated 16.04.2019 made in M.C.O.P. No.638 of 2016 on the file of the Motor Accident Claims Tribunal, District & Sessions Judge, Addl. District Court (FTC), Kanchipuram.



C.M.A. Nos.4449/2019 – 1928/2020

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For Appellant : Mr. M.Sivakumar in CMA
No.4449/2019
Mr. S.Arunkumar in CMA
No.1928/2020

For Respondents : Mr. S.Arunkumar for R-4 in CMA
No.4449/2019
Mr. P.Suresh Srinivasan for R-2
in CMA No.4449/2019
No Appearance for RR-1 & 3 in
CMA No.4449/2019
Mr. M.Sivakumar for RR-1 to 4
in CMA No.1928/2020
No Appearance for R-5 in CMA
No.1928/2020

COMMON JUDGMENT

While C.M.A. No.4449/2019 has been filed aggrieved by the order and decretal order dated 31.07.2015 made in M.C.O.P. No.1312 of 2008 by the Motor Accident Claims Tribunal, Addl. District Judge, Krishnagiri, CMA No.1928/2020 has been filed aggrieved by the order and decretal order dated 16.04.2019 made in M.C.O.P. No.638 of 2016 on the file of the Motor Accident Claims Tribunal, District & Sessions Judge, Addl. District Court (FTC), Kanchipuram. While the claimants are the appellants in CMA No.4449/2019, the insurance company is the appellant in CMA No.1928/2020.



C.M.A. Nos.4449/2019 – 1928/2020

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2. The main grievance canvassed by the appellants in CMA No.4449/2019 who were the claimants is that, though the Tribunal had ordered compensation for the death of the deceased in the accident, however, the insurance company, who was the insurer of the vehicle has not been ordered to pay the compensation and recover the same from the owner of the vehicle; rather, the owner of the vehicle was directed to pay the compensation to the claimants. Therefore, to the extent that direction needs to be passed to the insurance company to pay the compensation and recover the same from the owner of the vehicle, the aforesaid appeal has been filed.

3. However, the grievance canvassed by the appellant in CMA No.1928/2020, who is the insurer of the vehicle, which had been involved in the accident is that no valid policy was existing on the date of the accident and, therefore, the order of the Tribunal directing the insurance company to pay the compensation and recover the same from the owner of the vehicle is erroneous and, therefore, the aforesaid appeal has been filed.



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4. The accident in the aforesaid appeals is not disputed and so also the involvement of the vehicles is also not in dispute. The whole issue pertains to the cover note alleged to have been issued by the insurer, which makes the vehicle covered under the policy for the insurer to be made liable to pay the compensation. In this regard, the short facts, which would be necessary for appreciating the aforesaid issue are culled out hereunder.

FACTS IN CMA NO.4449 OF 2019 :

5. It is the case of the appellants, who are the claimants in the claim petition that the insurance policy was taken by the owner of the vehicle on 8.3.2008 at 7.00 a.m. and a cover note was issued under Ex.P-3 on receipt of cheque, Ex.R-4 by the agent acting on behalf of the insurer. It is the case of the claimants that the validity of the insurance policy starts from the moment the cover note is issued by collecting cheque from the owner of the vehicle. It is the further averment of the claimants that the accident had taken place on 8.3.2008 at about 9.45 p.m. and the policy was cancelled due to dishonour of the cheque on 10.03.2008 and, therefore, at the time of accident, the policy

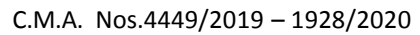


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was very much in force and, therefore, the exoneration of the insurer from its liability is wholly unsustainable. Therefore, the present appeal in CMA No.4449/2019 has been filed assailing the said order.

FACTS IN CMA NO.1928 OF 2020 :

6. It is the case of the insurance company/appellant that the validity of the policy through which the subject vehicle was covered started from 00.00 hours on 13.10.2008 to 12.09.2009 for which a cheque was given, which cheque, on presentment, was returned by the bankers leading to the cancellation of the policy. It is the further case of the appellant that the accident had happened on 12.10.2008 during which point of time, there was no subsisting contract of insurance between the appellant and the owner of the vehicle. However, relying on the cover note, Ex.P-7, which is disputed by the appellant, the Tribunal had erred in holding that the policy was valid on 10.10.2008, as is evident from the cover note without advertent to Exs.R-1 to R-8, which have been marked on behalf of the appellant. It is the averment of the appellant that the cover note itself is fabricated for the purpose of the case and had not been issued by the appellant through any of its agents. It is



7. The contention raised on behalf of the insurer in CMA No.1928/2020 that the cover note, which formed the basis of award of compensation, is a dated document, as there is a glaring discrepancy in the period during which the policy would be valid and that itself is a ground to absolve the insurer from its liability to pay the compensation.

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a fabricated document, as would be revealed by the discrepancy in the amount of premium between the cover note and the policy document. Further, it is the submission of the learned counsel that inspite of the aforesaid discrepancy, the fact remains that even the fabricated cover note shows that the effective commencement of the policy starts only from 10.03.2008 though the cover note has been issued on 8.3.08 at 7.00 A.M. Therefore, the policy being not valid at the time of the accident, no liability can be fastened on the insurer and rightly the Tribunal has appreciated the said fact and exonerated the insurer.

9. Countering the aforesaid submissions, it is the submission of the learned counsel appearing for the appellant in CMA No.4449/2019 that irrespective of the fact that the policy prescribes the validity period, however, the fact remains the cover note has been issued on behalf of the insurer by its agent, wherein the cheque was received on behalf of the insurer and the cover note number having reflected in the policy document, the cover note cannot be held to be fabricated. However, erroneously and on misconception, the Tribunal has not taken into account the validity of the



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policy which starts from the issuance of the cover note and the cover note merges with the policy upon its issuance, the accident having happened during the existence of the cover note, which has not been cancelled in the manner known to law by the insurer, the insurer is liable to pay the compensation to the claimants and recover the same from the owner of the vehicle.

10. Insofar as CMA No.1928/2020 is concerned, it is the submission of the learned counsel that the discrepancy in the amount shown in the cover note and the one shown in the policy document cannot be put against the claimants to negate their legitimate claim as the Motor Vehicles Act is a benevolent legislation intended to take care of the family, which is in dire straits on account of the death of the sole bread winner. Therefore, the order of the Tribunal in ordering the insurance company to pay the compensation and recover the same from the owner of the vehicle cannot be said to be illegal and it is squarely within the ratio laid down by the Apex Court in a catena of decisions.



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11. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

12. Before proceeding to analyse the individual facts of the case with reference to the validity of the policy, the issue relating to the ratio laid down in matters relating to orders of “*pay and recovery*” and the validity of a “*cover note*”, which has been issued prior to the issuance of a policy fell for consideration before the Apex Court in the case of ***United India Insurance Co. Ltd. – Vs – Laxmamma & Ors. (2012 (1) TN MAC 481 (SC)*** and ***National Insurance Co. Ltd. – Vs – Abhaysing Pratapsing Waghela & Ors. (2008 (2) TN MAC 448 (SC)***.

13. In *Laxmamma case*, the Supreme Court had considered the liability of the insurer to compensate the victim in cases where the premium was paid by way of cheque, but the cheque stood dishonoured and the policy was cancelled and in the said scenario, the Supreme Court juxtaposed the insurer into the shoes of the owner of the vehicle for the limited purpose of realising



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the object of Sections 147 and 149 of the Motor Vehicles Act to the limited extent of paying the compensation to the third party and, thereafter, recovering the same from the owner of the vehicle. In the said context, the Apex Court held as under :-

“17. The Court in Deddappa MANU/SC/4587/2007 : (2008) 2 SCC 595 again considered the relevant statutory provisions and decisions of this Court including the above three decisions in Inderjit Kaur MANU/SC/0842/1998 : (1998) 1 SCC 371, Rula MANU/SC/0112/2001 : (2001) 3 SCC 151 and Seema Malhotra MANU/SC/0112/2001 : (2001) 3 SCC 151. In para 24 (at page 601) of the Report, the Court observed as under:

24. We are not oblivious of the distinction between the statutory liability of the insurance company vis-à-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. 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.



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C.M.A. Nos.4449/2019 – 1928/2020

Then in para 26 (at page 602), the Court invoked extraordinary jurisdiction under Article 142 of the Constitution of India and directed the insurance company to pay the amount of claim to the claimants and recover the same from the owner of the vehicle.

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.



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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."*

14. From the aforesaid decision of the Apex Court, it is implicitly evident that where the accident occurred during the survival of the policy, even upon dishonour of the cheque and the communication of the dishonour



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being after the happening of the accident, the insurer is liable to satisfy the award of compensation, but was well within its rights to work out its remedy to recover the amount.

15. The aforesaid decision in *Laxmamma case* was on the basis of the decision of the Apex Court in the case of ***Oriental Insurance Co. Ltd. – Vs – Sunitha Rathi & Ors. (1998 (1) SCC 365)***, which decision was based on the decision in ***National Insurance Co. Ltd. – Vs – Jikubhai Nathuji Dabhi (1997 (1) SCC 66)***.

16. However, it was the practice of insurance companies to issue cover note before issuing the policy, which cover note covers a temporary period of insurance before the issuance of the policy. However, the issuance of cover note stood discontinued due to very many fraudulent claims being made on the basis of the cover note and nowadays actual policy itself is being issued, but with the commencement of risk from the scheduled time as is mentioned in the policy.



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17. The question of validity of cover note fell for consideration before the Apex Court in *Abhaysing case (supra)* and the Apex Court, relating the issue to Section 145 of the Motor Vehicles Act, held as under :-

“13. The Motor Vehicles Act, 1988 (for short, "the Act") was enacted to consolidate and amend the law relating to motor vehicles. Chapter XI of the Act provides for insurance of motor vehicles against third party risks.

Section 145 of the Act is the definition section; Clause (b) whereof defines 'certificate of insurance' to mean a certificate issued by an authorized insurer in pursuance of Sub-section (3) of Section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.

Clause (d) of Section 145 defines 'policy of insurance' to include 'certificate of insurance'.

* * * * *

15. One of the grounds which are available to the insurance company to deny its statutory liability as envisaged under Sub-section (2) of Section 149 of the Act is that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particulars.



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16. *Indisputably, the first respondent is a third party in relation to the contract of insurance which had been entered into by and between the appellant and the owner of the vehicle in question. We have noticed hereinbefore that a document was produced before the Tribunal. Even according to the appellant, although it was only a Motor Input Advice cum Receipt, it contained the Cover Note No. 279106. We, therefore, have to suppose that a Cover Note had, in fact, been issued. If a Cover Note had been issued which in terms of Clause (b) of Sub-Section 1 of Section 145 of the Act would come within the purview of definition of certificate of insurance; it also would come within the purview of the definition of a insurance policy. If a Cover Note is issued, it remains valid till it is cancelled. Indisputably, the insurance policy was cancelled only after the accident took place. A finding of fact, therefore, has been arrived at that prior to the deposit of the premium of insurance in cash by the owner of the vehicle, the cover note was not cancelled.*

18. From the ratio laid down in *Abhaysing* case, it is evident that “Cover Note” would fall within the purview of definition of Certificate of Insurance and it would also come within the purview of the definition of insurance policy, so long as the insurance policy is a continuance of the cover



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note and the cover note is mentioned in the policy of insurance. Therefore, there can be no ambiguity in the proposition that so long as the cover note is issued and also finds place in the policy of insurance, the said cover note is a valid certificate of insurance, which would indemnify the insurer in compensating the claimants.

19. The policy of insurance in both the cases is premised on the cover note, which has been issued anterior in point of time, as claimed by the claimants and further the cover note details having found place in the policy of insurance, necessarily, the cover under the policy would start from the time of issuance of cover note and would not be from the date when the policy was issued.

20. In this backdrop, this Court has to look into the individual facts of each case coupled with the documents, more particularly, the cover note and the policy, which have been marked as exhibits to come to the conclusion, whether the cover note would have the validity for it to get merged along



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with the policy on it being issued so as to make the insurance company liable to indemnify the claimants.

21. CMA No.4449/2019, has been filed by the claimants assailing the order of the Tribunal in not directing the insurance company to pay the compensation to the claimants and, thereafter, to recover the same from the owner of the vehicle. The Tribunal had rejected the case of the claimants on the ground that upon the dishonour of the cheque, the policy document automatically stood cancelled from inception irrespective of whether a separate communication is sent or not and, therefore, held that the insurance company cannot be made liable to indemnify the claimants.

22. This Court is not entering into the correctness of the order passed by the Court below at the first instance, as the whole genesis of the case boils down to a legal proposition and not to the findings arrived at by the Tribunal, which, even at first blush, is erroneous, as the Apex Court in ***New India Assurance Co. Ltd. – Vs – Rula & Ors. (2000 (3) SCC 195)***, following the



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decisions in *Deddappa case*, *Laxmamma case* had 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



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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)

23. Therefore, it unambiguously transpires that where the insurance company sends intimation to the owner, the insurance company's liability to indemnify the third parties ceases and the insurance company is not liable to satisfy the awards of compensation in respect thereof. Therefore, so long as the policy and cover note is not cancelled by the insurance company, the



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liability of the insurance company to indemnify the claimants stands secured and, therefore, the findings in this regard rendered by the Tribunal is erroneous.

24. However, would the facts and materials available on record, more especially, the policy and the cover note give any leverage for overturning the order in favour of the claimants is the moot question that falls for consideration of this Court in CMA No.4449/2019.

25. Ex.P-3 is the cover note, which has been marked on behalf of the claimants and Ex.R-4 is the policy cancellation letter along with the copy of the insurance policy. The stand of the claimants is that the policy of insurance being a continuation of the cover note the accident having taken place after the issuance of the cover note, the insurance company is liable to indemnify the claimants. However, it is the stand of the insurance company that the cover note, viz., Ex.P-3 is a fabricated document.



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26. The accident had taken place at about 9.45 p.m. on 8.3.2008. The cover note, Ex.P-3, is alleged to have been issued on 8.3.2008 at 7.00 a.m. and the premium towards the same has been shown in the cover note as Rs.13,248/-. However, there is no whisper in the cover note as to the mode of payment, as the columns "*Cheque No.*", "*Cheque Date*" and "*Bank Name*" have not been shown in the cover note. Further, the "*cubic capacity*" of the vehicle is shown as "3298". Further, the cover note reveals that the effective date and time of commencement of insurance for the purpose of this Act is shown as "*10.03.2008 – 7.00 A.M.*" Therefore, it is even clear from the cover note that the effective date and time of commencement of insurance would be from 7.00 A.M. on 10.03.2008.

27. Be that as it may. A perusal of Ex.R-9, the letter through which the policy was cancelled, which has the policy as enclosure reveals that the total premium that was paid on the policy is "*Rs.13,249/-*" and the period of insurance is shown as "*00.00 'O' Clock on 10.03.2008 to 09.03.2009*". In essence, the period of insurance coverage as given in the policy of insurance tallies with the cover note. Therefore, on the date when the accident had



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taken place, there was no valid policy in existence as the coverage was to commence posterior in point of time on 10.03.2008.

28. In addition to the above, discrepancies galore between the cover note and the insurance policy. In that, the “*cubic capacity*” of the vehicle that is sought to be insured in the policy is shown as “2000”, whereas in the cover note, as aforesaid, it is shown as “3278”. Likewise, the premium amount as shown in the policy of insurance is “Rs.13,249/-” whereas in the cover note it is shown as “Rs.13,248/-”. The above discrepancies, coupled with the period when the policy is due to commence, clearly tilts the scale in favour of the insurance company that there is likelihood of fabrication of the cover note.

29. However, one aspect, which is stressed on behalf of the claimants is that the cover note number, which is shown on the top of the cover note finds reflection in the policy of insurance and, therefore, the fabrication alleged cannot be sustained and the mentioning of the said cover note number in the policy of insurance lends more credence to the cover note, thereby, the decision in *Abhaysing case (supra)* stands squarely attracted.



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30. True it is that the cover note number finds mention in the policy of insurance, thereby raising a serious concern with regard to the submission advanced on behalf of the insurance company with regard to fabrication of document, but notwithstanding the said fact, the cover note as well as the policy of insurance provide that the period of commencement of insurance would be only from 00.00 hrs. on 10.03.2008 and the accident having taken place on 08.03.2008 at about 9.45 p.m., there was no valid policy in the eye of law and, therefore, the insurance company cannot be made liable to indemnify the claimants, and it is only the owner of the vehicle, who has to compensate the claimants.

31. The aforesaid view of this Court gains strength from the decision of the Apex Court in the case of ***Deddappa & Ors. – Vs – The Branch Manager, National Insurance Co. Ltd. (2008 (2) TN MAC 138 (SC))***, wherein, speaking on the law of contracts, which is the guiding factor in insurance claims, the Apex Court in the case policies, where the cheque issued had been dishonoured in



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respect of the vehicles, for which policy had been issued, 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).

* * * * *

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. 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. 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



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C.M.A. Nos.4449/2019 – 1928/2020

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. 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.

19. 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 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



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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.

** * * * **

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



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C.M.A. Nos.4449/2019 – 1928/2020

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 Colinvau'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



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C.M.A. Nos.4449/2019 – 1928/2020

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-à-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. 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."

(Emphasis Supplied)

32. 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



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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.

33. In the case on hand, not only the validity of the policy had not commenced at the material point of time, but the cheque which was issued towards the premium was also returned unpaid and 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. Further, as postulated in the aforesaid case, the insurance company had cancelled the policy and all the concerned have been intimated, including the



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owner of the vehicle. Such being the position as is evident from the materials available on record, the insurance company would not be liable to satisfy the claim.

34. In such a backdrop, while the finding recorded by the Tribunal with regard to the liability of the insurance company to indemnify the claimants is erroneous, however, the final result arrived at by the Tribunal that the insurance company need not pay the compensation to the claimants, but it is only the owner of the vehicle, who has to compensate the claimant, cannot be said to be erroneous in view of the decision in *Deddappa case*. ***Therefore, this Court finds no reason to interfere with the order passed in CMA No.4449/2019 and, accordingly, CMA No.4449/2019 is dismissed.***

35. Coming to CMA No.1928/2020, which has been filed by the insurance company assailing the order of the Tribunal directing the insurance company to pay the compensation to the claimants and, thereafter, to recover the same from the owner of the vehicle, the Tribunal had directed payment of compensation by the insurance company on the premise that the



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premium had been paid by cheque, which upon dishonour, the insurance company had informed the owner about the cancellation of the policy, but the accident had happened prior to the said information being given to the owner of the vehicle and, therefore, the insurance company is liable to indemnify the claimants.

36. In the present appeal as well, a cover note has been issued prior to the policy. While the cover note has been marked on behalf of the claimants, the policy has been marked on behalf of the insurance company/appellant before the Tribunal.

37. Ex.P-7 is the cover note, which has been marked on behalf of the claimants and Ex.R-1 is the policy of insurance marked on behalf of the insurance company. Equally, even in this case, the stand of the claimants is that the policy of insurance being a continuation of the cover note the accident having taken place after the issuance of the cover note, the insurance company is liable to indemnify the claimants. However, it is the



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stand of the insurance company that the cover note, viz., Ex.P-7 is a fabricated document.

38. The accident had taken place at about 9.45 p.m. on 12.10.2008. It is to be pointed out that though cover note has been filed, however, there is no mention about the time and the date on which the cover note has been issued. The premium towards the policy has been shown in the cover note as Rs.18,699/-, as is reflected in Ex.P-7. However, from the order of the Court below, as put forth by the claimants, cheque bearing No.219876 dated 10.10.2008 had been issued for a sum of Rs.13,474/- towards premium, as is evidenced from the policy, Ex.R-1. This Court is at a loss to understand as to the variance in the premium amount between the cover note and the cheque issued as a consequence of the cover note. However, there is no whisper in the cover note as to the mode of payment, as the columns "*Cheque No.*", "*Cheque Date*" and "*Bank Name*" have been left blank. However, the cover note reveals that the effective date and time of commencement of insurance for the purpose of this Act is shown as "*10.10.2008 – 00.00 Hrs.*"



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39. Pausing here for a moment and going to the policy, the validity of the policy is shown from *“00.00 ‘ O’ Clock 13.10.2008 to midnight on 12.10.2009”*. Therefore, it is clear from the policy that the effective date and time of commencement of insurance would be from *“00.00 ‘ O’ Clock on 13.10.2008*. The said policy has been issued on 15.10.2008.

40. Further, the cheque had been received for a sum of Rs.13,474/- allegedly on behalf of the insurance company by an agent holding *Agency Code No.52967* as is reflected in the cover note, though the amount shown in the cover note as total premium is to the tune of Rs.18,699/-. However, in the policy document, Ex.R-1, the *“Agent Code”* is mentioned as *“Direct”*, which effectively means that the policy was taken directly and not through an agent. When the policy had been taken directly at the Branch, as is reflected in the policy of insurance, the cover note spells out that the cover note has been issued by a person holding agent code No.52967. The above discrepancy strikes at the root of the cover note and coupled with the fact that there is no mention about the cheque details in the cover note and also the fact that the premium amount shown in the cover note does not tally with



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the premium paid by the owner of the vehicle, the only logical inference that could be arrived at is that the policy was taken directly at the Branch after the date of the accident and with the connivance of persons connected with the insurance company, a cover note was fabricated as if the policy was taken anterior in point of time to the accident.

41. The above finding of this Court with regard to the cover note being a fabricated document, as already pointed out above, is revealed by the fact that while the policy is stated to have been taken directly, as is revealed by the Agency Code shown in the policy document as “Direct”, however, the cover note gives a fictitious agency code, which is not revealed in the policy document, as necessarily if the policy is taken through an agent, the agency code would stand reflected in the policy document, which alone would give a remunerative benefit to the agent, who had solicited the policy. Therefore, the alleged cover note cannot form the basis for fastening liability on the insurance company to indemnify the claimants.



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42. Further, the policy, being not in force at the material point of time, viz., the date of accident on 12.10.2008, as held by the Apex Court in *Deddappa case* the insurance company would not be required under the contract to meet the liabilities arising under the contract, as on the crucial date, there was no valid policy for the insurance company to be fastened with any liability as the liability of the insurance company would commence only from the specific time and date mentioned in the policy of insurance.

43. Though the Apex Court in *Abhaysing case* had held that the cover note would fall within the definition of Certificate of Insurance, with which this Court is in respectful agreement, but for the discrepancies pointed out in the said cover notes, which are the subject matters in these appeals, the contention raised with regard to the genuineness of the cover note requires to be sustained, as the fabrication of the said document is writ large on the said cover note.

44. The only life line that could be imported from *Abhaysingcase* is the entry of the cover note number in the policy of insurance. Though the



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Supreme Court has held that the mention of the cover note number in the policy document lends credence to the cover note, but that was on the facts and circumstances of the said case. In the case on hand, this Court has analysed threadbare the materials, more especially the cover note and the policy document in both the cases and has come to the conclusion that the fabrication of the document alleged cannot be ruled out. Such being the case, definitely, it would be a travesty of justice if the facts in *Abhaysing case* are imported to this case to give a finding that the mentioning of the cover note number in the policy document would make the cover note genuine.

45. It is to be pointed out that all the facts and circumstances and the materials connected therewith in analysing a document have to be taken together while considering the document and the document should not be considered in isolation. In the case on hand, as pointed out above, the discrepancies, which have been pointed out above, goes to the root of the issue to render the cover note as not genuine and, therefore, no reliance can be placed on the same.



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46. In such a backdrop, the finding recorded by the Tribunal with regard to the liability of the insurance company to indemnify the claimants by paying the compensation and, thereafter, recovering the same from the owner of the vehicle is erroneous and it goes against the ratio laid down in *Deddappa case*, as there is no valid policy in the eye of law, as the cover note itself is not genuine. Therefore, the Tribunal has erred in directing the insurance company to pay the compensation to the claimants and recover the same from the owner of the vehicle, which definitely warrants interference at the hands of this Court. ***Therefore, the order impugned in CMA No.1928/2020 requires to be set aside and the appeal deserves to be allowed. Accordingly, CMA No.1928/2020 is allowed.***

47. Accordingly, the following order is passed :-

i) CMA No.4449/2019 stands dismissed confirming the order dated 31.07.2015 made in M.C.O.P. No.1312 of 2008 by the Motor Accident Claims Tribunal, Addl. District Judge, Krishnagiri.

ii) C.M.A. No.1928 of 2020 stands allowed by setting aside the order dated 16.04.2019 made in M.C.O.P. No.638 of 2016 by the file of the Motor Accident Claims



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Tribunal, District & Sessions Judge, Addl. District Court (FTC), Kanchipuram.

iii) The compensation awarded by the Tribunal to the claimants in both the appeal is confirmed and the claimants are at liberty to take appropriate proceedings for recovering the compensation from the respective respondent, who is the owner of the vehicle.

(iv) Compensation amount, if any, deposited by the insurance company, shall stand refunded.

v) Consequently, connected miscellaneous petition is closed. There shall be no order as to costs in this appeal.

vi) Further, it is made clear that the order passed in these appeals, on the issue of cover note, shall not be quoted as a precedent.

48. Before parting with the case, this Court would like to sound a word of caution to the insurance company, which is involved in the present appeals. Reliance General Insurance Company is the insurer, who is involved in both the appeals. The cover notes, which are the subject matter of the present appeals have originated from the insurance company, through certain persons, who are connected with the affairs of the insurer. But for the connivance with the persons, who are involved in the present cases, be it in



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the sales side or the administrative side while issuing the policy, the inclusion of the cover note number in the policy could not have taken place. It can be safely stated that there is a larger conspiracy between the persons involved in issuing the policy and also the agents, who solicit the policy, without whose connivance, such a fraudulent act cannot be perpetrated. This Court is not inclined to wash the dirty linen of the insurer in this judgment, but suffice to point out that all is not well with the persons associated with the insurer. Unless the insurance company involved in the present appeals sets right their house to be in order, it would only lead to addition of proceedings in the form of claims by unscrupulous elements, who would connive with individuals to tear down the insurer.

49. In the present case, there were discrepancies, which were evident from the record, which necessitated this Court to pass the aforesaid orders. If not for the discrepancies, this Court's hand would have been tied to follow the ratio laid down in *Abhaysing case* as a matter of judicial decorum, which would have allowed the perpetrators of the crime to walk scot-free, though the claimants, who are the actual sufferers, for whom the beneficial



C.M.A. Nos.4449/2019 – 1928/2020

legislation u/s 147 and 149 of the Motor Vehicles Act have been framed would have realised the benefits of the legislation, but at the cost of an illegality and dishonesty. In such a scenario, this Court would also have been a mute spectator, without being able to rectify the illegality, as the order in *Abhaysing case* would have stood in the way of this Court to pass any other order. Therefore, it is high time that the insurance company involved in the present appeals sets right its house so that it is not taken for a ride by unscrupulous elements.

22.12.2023

Index : Yes / No

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C.M.A. Nos.4449/2019 – 1928/2020

To

1) The Addl. District Judge
Motor Accident Claims Tribunal
Krishnagiri.

2) District & Sessions Judge
Motor Accident Claims Tribunal
Addl. District Court (FTC)
Kanchipuram.



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C.M.A. Nos.4449/2019 – 1928/2020

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY JUDGMENT IN
C.M.A. NO.4449 OF 2019
C.M.A. NO.1928 OF 2020**



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C.M.A. Nos.4449/2019 – 1928/2020

**Pronounced on
22.12.2023**