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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18.07.2023

+ **MAC.APP. 897/2017 & CM APPL. 36836/2017**

HDFC ERGO GENERAL INSURANCE CO LTD

..... Appellant

Through: Mr. Sameer Nandwani &
Ms. Nikita Sharma, Advs.

versus

CHANDER KALA DEVI & ORS Respondents

Through: Ms. Deepali Gupta, Adv. for LR
of R-7.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 11.07.2017 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, Shahdara, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in MAC Petition No. 178/2014, whereby *inter alia* the learned Tribunal has rejected the submission of the appellant that it is not liable to pay compensation under the Impugned Award as the cheque issued by the respondent no.7 (since deceased) for obtaining the insurance policy for the Offending Vehicle had been returned unpaid by its banker with the remark of there being '*insufficient funds*' in his bank account, and prior to the date of the accident, the appellant had

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issued an intimation letter dated 04.04.2014, informing the respondent no.7 of the cancellation of the insurance policy.

2. The learned counsel for the appellant submits that in the present case, the cheque dated 25.03.2014 issued by the respondent no.7 towards the insurance premium had been returned back unpaid with the remark “*funds insufficient*” vide Memo dated 31.03.2014. The appellant, by a communication dated 04.04.2014, informed the respondent no.7 of the return of the cheque and of the cancellation of the insurance policy. He submits that the said document was exhibited as Ex.R3W1/3. He submits that the accident occurred thereafter on 20.05.2014 and, therefore, in terms of the judgment of the Supreme Court in *United India Insurance Company Limited v. Laxmamma And Others*, (2012) 5 SCC 234, the appellant was not liable to pay the compensation under the insurance policy.

3. On the other hand, the learned counsel for the Legal Heirs of the respondent no.7 submits that the learned Tribunal has, in the Impugned Award, found that the appellant has been unable to prove the service of the intimation of the cancellation of the insurance policy on the respondent no.7. In absence of intimation of such cancellation, the appellant remained liable under the insurance policy, as has been held by the Supreme Court not only in *Deddappa v. National Insurance Co. Ltd.*, (2008) 2 SCC 595, but also in an earlier decision of the Supreme Court in *New India Assurance Co. Ltd. v. Rula And Others*, (2000) 3 SCC 195.



4. I have considered the submissions made by the learned counsels for the parties.

5. On the issue of liability of the appellant to pay the compensation under the Impugned Award, the learned Tribunal has held that the service of the letter dated 04.04.2013 (Ex.R3W1/3), cancelling the insurance policy, claimed to have been addressed by the appellant to the respondent no.7, could not be proved by the appellant, as the witness of the appellant could not produce the postal receipt thereof nor could state the manner in which the said notice was served on the respondent no.7. The finding of the learned Tribunal is reproduced hereinunder:-

“26. In the instant case, the letter Ex.R3W1/2 dated 04.04.2014 is placed by the insurance company. There is nothing on record that this letter was dispatched to deceased Chhuni Lal either by speed post or by any other means. Postal receipts are not placed on record. The placing of letter itself does not mean that notice regarding dishonored of cheque or cancellation of insurance policy was given to the Chhuni Lai. There is nothing on record that letter duly addressed was dispatched to Chhuni Lal by any means.

27. There is nothing on record that intimation regarding cancellation of insurance policy was given to concerned licencing authority. The insurance company has failed to prove that notice of cancellation of insurance policy was duly given to the deceased Chhuni Lai and to the licencing authority. The insurance company itself is responsible for this predicament. The insurance company has issued the insurance policy on the receipt



towards premium in contravention provision of the Section 64 (VB) Insurance Act. The public interest must prevail over the interest of insurance company. The insurance company is liable for this predicament so insurance company is liable to pay compensation to the petitioners.”

6. In ***Rula & Ors.*** (supra), the Supreme Court, considering a similar defence of the Insurance Company to deny its liability under the Insurance Policy, held as under:

“10. The contract of insurance in respect of motor vehicles has, therefore, to be construed in the light of the above provisions. Section 146(1) contains a prohibition on the use of the motor vehicles without an insurance policy having been taken in accordance with Chapter XI of the Motor Vehicles Act. The manifest object of this provision is to ensure that the third party, who suffers injuries due to the use of the motor vehicle, may be able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the injuries.

11. Thus, any contract of insurance under Chapter XI of the Motor Vehicles Act, 1988 contemplates a third party who is not a signatory or a party to the contract of insurance but is, nevertheless, protected by such contract. As pointed out by this Court in New Asiatic Insurance Co. Ltd. v. Pessumal Dhanamal Aswani [AIR 1964 SC 1736] the rights of the third party to get indemnified can be exercised only against the insurer of the vehicle. It is thus clear that the third party is not concerned and does not come into the picture at all in the matter of payment of premium. Whether the premium has been paid or not is not the concern of the third party who



is concerned with the fact that there was a policy issued in respect of the vehicle involved in the accident and it is on the basis of this policy that the claim can be maintained by the third party against the insurer.

12. *It was in the background of the above statutory provisions that the provisions of Section 64-VB, upon which reliance has been placed by learned counsel for the appellant, were considered by this Court in Oriental Insurance Co. Ltd. v. Inderjit Kaur [(1998) 1 SCC 371 : 1999 SCC (Cri) 148] in which it was laid down as under: (SCC p. 375, para 9)*

“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 Sections 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify 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.”

13. *This decision, which is a three-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the insurance policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the issuance of the policy on*



the date on which the accident took place. 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 the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party.”

7. In ***Laxmamma and Others*** (supra), the Supreme Court, in relation to the avoidance of the liability by the insurer where the cheque for the insurance premium gets dishonoured, has held as under:-

“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 13-5-2004 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."

8. The Supreme Court has, therefore, held that to avoid liability, the insurer must prove that it had cancelled the policy of insurance and sent intimation thereof to the owner of the vehicle prior to the happening of the accident. In the present case, the appellant has failed to prove the same.

9. I, therefore, find no infirmity in the Impugned Award. The appeal is accordingly dismissed.

10. The statutory amount deposited by the appellant with the Registry of this Court, along with interest accrued thereon, be released in favour of the appellant.

11. There shall be no order as to costs.

NAVIN CHAWLA, J

JULY 18, 2023/rv/ss