

IN THE HIGH COURT AT CALCUTTA**Civil Appellate Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****F.M.A No. – 723 of 2017****With****IA No. CAN 1 of 2013 (Old No. CAN 8992 of 2013)****+****CAN 2 of 2017 (Old No. CAN 235 of 2017)****In the Matter of****Smt. Subhasini Samanta and Anr.****Vs.****National Insurance Co. Ltd. & Anr.****For the Appellant : Mr. Krishanu Banik, Adv.
Mr. Tathagata Banik Adv.****For the Respondent no.1 : Mr. Arabinda Kundu Adv.****Heard on : 22.01.2024****Judgment on : 24.01.2024****Subhendu Samanta, J.**

The instant appeal has been preferred against the Judgment and Award dated 12th March 2013 passed by the Learned Judge, Motor Accident Claims Tribunal Tamluk, Purba Medinipur in MAC Case No. 23/244 of 2012/2008.

The brief fact of the case is that the present appellants being the claimants have preferred an application before the Learned Tribunal u/s 166 of Motor Vehicles Act for getting compensation on the ground that their predecessor was died in a road traffic accident due to rash and negligent driving of the

driver of the offending vehicle duly insured under the policy of the Insurance Company.

The claim case was contested by the Insurance Company by filing written statement.

After hearing the parties and after receiving the evidence the Learned Tribunal has awarded a sum of Rs 3,88,5,00/-. The Learned Tribunal has directed the OP No. 1 i.e. the owner of the offending vehicle to pay the same award to the claimant along with 08% interest per annum.

Owner has not satisfied with the award hence the claimant has preferred the instant appeal. Learned Advocate for the appellant submits that the Learned Tribunal has committed an error by directing the owner of the offending vehicle to pay the compensation. The offending vehicle was well covered under the policy of the Insurance Company. Thus the Insurance Company may be directed to pay the compensation and they may be given liberty to recover the same from the owner. He submits that the offending vehicle was well covered under the National Insurance Company Limited; to renew the said policy the owner has issued a cheque in favour of the Insurance Company. On the basis of the cheque the Insurance Company has issued the new policy covering under the period of the accident. Subsequently the said cheque was dishonoured. The Insurance Company after issuing the policy in favour of the offending vehicle cannot cancel the policy. The

insurance company has liability to pay the compensation and thereafter they may be indemnified through the owner.

In support of his contention he cited several decisions reported in **New India Assurance Company Limited Vs. Rula and Ors AIR 2000 SC 1082, Oriental Insurance Company Limited Vs. Indrajit Kaur 1998 SC 588, Pranab Kumar Mitra Vs. Oriental Insurance Company Ltd. 2007 ACJ 1467, Oriental Insurance Company Vs. Shibam Kutti TAC 1 (2006) 631.**

The Hon'ble Three Judges Bench of Supreme Court of India in the Case of **Indrajit Kaur and ors.** (supra) has held that

6. In the setting indicated we are of the view that the High court was not right in holding that in the absence of steps for cancellation of the cover note, the risk would be subsisting but as Mr. Madan has himself stated, we do not interfere with the decision of the High Court requiring the sum of Rs 15,000/- to be paid by the insurer. "We find it is difficult to conclude that the judgment in the case of United India Insurance Company Ltd. Vs. Ayeb Mohammed decides a principle of law because no notice had been issued on the special leave petition. At the same time, the opinion is expressed in the judgment that the High Court was in error in holding that, in the absence of steps to cancel the cover note, the risk would subsist.

Chapter 11 of the Motor Vehicles Act, 1988, provides for the insurance of motor vehicles against third party risks. Section 146 thereunder states that no person shall use or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle a policy of insurance that complies with the requirements of the Chapter. Section 147 sets out the requirements of policies and the limits

of liability. A policy of insurance, by reason of this provision, must be a policy which is issued by a person who is an authorised insurer. Sub-section 5 reads thus:

*“(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.”*Section 149 refers to the duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

The Hon’ble Supreme Court in **Rula** (supra) followed decision of **Indrajit Kaur** and held that-

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 Insurance Policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party.

The Hon’ble Division Bench of this Court in **Pranab Kumar Mitra and anr.** has held that –

20. Factually, however, we take note in this case specifically that because of dishonour of cheque which resulted in the non-payment does not render the contract ipso facto invalid or void. The insurance company is concerned with the recovery of consideration money provided under the statute, namely, the

Negotiable Instruments Act. Under the statutory provision it is possible to recover entire amount of consideration with interest. It is true until and unless cheque is encashed no payment can be said to have been made but that does not mean consideration is not there. According to us the insurance company without taking action for recovery in accordance with law of the amount of dishonoured cheque, revoking the contract, such action would be illegal revocation so far the third party is concerned. As such we cannot say that the insurance company was justified to cancel the insurance policy. Moreover, we find a document whereby the insurance company intimated to the owner of the vehicle on 10.01.2011 about cancellation. Accordingly, in our opinion the policy is deemed to have remained valid and subsisting until 10.01.2001.

On the basis of the above arguments the learned Advocate for the appellant submits that the Insurance Company may be directed to pay the compensation and in turn they are may given a liberty to recover the same from the owner.

Learned Advocate Mr. Pahari appearing on behalf of the Insurance Company submits that the premium in respect of the policy of Insurance was paid by way of cheque by the owner of the offending vehicle, and in anticipation that the aforesaid cheque would be honoured, that the Insurance Company issued Insurance policy in respect of the offending vehicle. However, upon presentation of the aforesaid cheque by the Insurance Company before its banker, it was returned with endorsement 'funds insufficient' which clearly goes to show that the Insurance Company actually did not receive any

premium for renewal of the policy of Insurance from the owner of the offending vehicle. He further submits that the Insurance Company. After the cheque has been dishonoured has intimated the owner and also issued a notice of cancellation of such policy. The said notice was received by the owner of the offending vehicle. The owner thereafter never renewed the policy. So, in this case after cancellation of the policy, initially issued in favour of the offending vehicle, actually had no force on the day of alleged accident. He argued that the same proposition was discussed by the Hon'ble Supreme Court in **Dadappa and Ors. Vs. Branch Manager National Insurance Company Limited 2008 ACJ 581** wherein the Hon'ble Supreme Court observed as follows:

“26 we are not oblivious of the distinction between the statutory liability of the insurance company vis-a-vis a third party in the context of Sections 147 and 149 of the Act and its liability in other cases. But the same liability 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 liable to satisfy the claim”

He also cited a decision Hon'ble Supreme Court passed in **United India Insurance Company Vs. Laxmamma and Ors. AIR 2012 SC 2817.**

“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. Actg unless the policy of insurance is cancelled 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 dishoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and send 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".

Heard the Learned Advocate.

Perused the observation of the Learned Tribunal and also perused the ratio of decisions passed by the Apex Court.

It appears that Insurance Company and claimants have cited several decisions before the Learned Tribunal. The Learned Tribunal has considered the decisions passed by the Hon'ble Supreme Court. It appears that the Division Bench of this Hon'ble Court in **Pranab Kumar Mitra (supra)** has held that till the date of intimation to the owner regarding the cancellation of the policy the contract was valid. Followed the accident happened in the case of **Pranab Kumar Mitra (supra)** prior to the intimation to the owner, thus the Division Bench of this court is of opinion that the Insurance Company is liable to pay. But the given facts and circumstances of this case shows that the alleged incident happened on 25.08.2008 and the Insurance Company has intimated the same by issuing a notice

of cancellation of the policy on 31.03.2008. Thus the owner has received the intimation more than 05 months prior to the accident but he has not taken any steps to renew the insurance policy of the offending vehicle. In instant case, it appears that the observation of Hon'ble Supreme Court in **Dadappa (supra) and Laxmamma (supra)** can be well followed in this case.

Thus I find no material to interfere with the observation of the Learned Tribunal; the appeal is hereby dismissed as devoid of merit.

FMA 723 of 2017 is dismissed.

Connected CRAN applications if pending are also disposed of.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)