IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMAT No. 1064 of 2016

Sibabrata Dutta & Anr.

Vs

The Oriental Insurance Company Limited & Anr.

With

COT 104 of 2024

The Oriental Insurance Company Limited & Anr.

Vs.

Sibabrata Dutta & Ors.

For the Appellants	: Mr. Niranjan Maity.
For the Respondent No.1/ Insurance Company	: Mrs. Sucharita Paul.
For the Respondent No.2/ Owner	: None.
Hearing concluded on	: 21.08.2024
Judgment on	: 13.09.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred by the claimants against the original order and award dated 04.01.2016 passed by Additional District & Sessions Judge, Motor Accident Claims Tribunal, 15th Court, Alipore, District – South 24 Parganas in M.A.C. Case No.02 of 2012, **under Section 166 of the Motor Vehicles Act, 1988.**

2. **THE FACTS :-**

> *"……On 13.08.2003 at about 1.25 P.M. It is stated that on the aforesaid date and time victim Minati Dutta, returning with petitioners in a tourist bus bearing no. OSP-5619, after paying homage to Dhabal Giri Temple at Dhabal Giri Hill, under Lingaraj P.S. District – Khurda in Orrisa and due to rash and negligence driving of its driver the offending bus turned turtle by the side of road, which caused fatal injury to Minati Dutta and she died due to said vehicular injury on the spot. It is further stated that at the time of the accident the deceased was aged about 57 years and was employed at Mathabhanga S.D.O. office Cooch Behar and drawing salary of Rs. 12,981/- per month…………."*

3. The O.P. No. 2/Insurance Company contested the case by filing a written statement denying the allegations stating inter-alia that the claim case is not maintainable and there is no cause of action against the answering O/P and the same is also bad for *non-joinder* of necessary party and *mis-joinder* of unnecessary parties.

4. It had further contended that the O.P. No.1/Owner had issued premium cheque bearing no. 210769, dated 13.12.2002 in the name of O.P. no.2 for sum of Rs. 15,306/- against the vehicle in question, which got dishonored on 11.01.2003 for insufficient fund and the policy bearing no. 345101/31/2003-5400 was cancelled after duly informing the O.P. no.1 and R.T.O.

5. In view of the aforesaid facts and circumstances the prayer had been made for dismissal of the claim case.

6. The **Claimants** examined **two witnesses** and proved relevant documents which were marked **Exhibit 1 to 16.**

7. The **Opposite Party no.2** examined witness and proved documents which were marked **Ext. A to H.**

8. **The tribunal finally held as follows :-**

"........ <u>MAC Case No. 02/2012</u>

<u>Dated 04.01.2016</u>

...........The petitioners have been able to prove that the accident occurred to rash and negligent driving of the offending bus by its driver. The petitioners also have been able to prove salary and employment of the deceased. But as the issue no. 4 & 7 have been decided against the petitioners, no relief can be granted to the petitioners. At the best plaint can be returned for filling the claim in a court having territorial jurisdiction.

As this court has no territorial jurisdiction to entertain the present claim, no order / award can be passed. As per provision of CPC, the plaint is returned with a liberty to the claimant to file it before a court having territorial jurisdiction.

Hence, it is.

<u>Ordered</u>

that the application dt. 22.12.2011 filed in MACC case is returned to the claimant with a liberty to file the same before the appropriate court as per the observations made in the body of this order. Parties to act accordingly.

Sd/-
Addl. Dist & Sessions Judge
15th Court, Alipore
South 24 Parganas......"

9. Being aggrieved, the claimant preferred this appeal on the grounds :-

a) That the tribunal erroneously held that it has no jurisdiction to decide the case.

b) That the tribunal though held that the claimant is entitled to compensation, wrongly did not allow the claim of the claimant on the ground of no jurisdiction.

10. Considering the materials and evidence on record, the following is evident :-

i) The principal contention of the Insurance Company/Opposite Party is that, there was no valid Insurance policy in respect of the offending vehicle as the cheque issued by the claimant to pay the premium was dishonored and that the Insurance Company took necessary steps to inform the claimant about the same. It is stated that as the claimant took no steps to pay the premium as required, the Insurance Company cancelled the same and as such it is the stand of the Insurance Company that they are not liable to pay the said compensation.

11. The Supreme Court in ***United India Insurance Company Ltd. vs Laxmamma & Ors., (2012) 5 SCC 234*** held :-

> ***"26. In our view, the legal position is this : where the policy of insurance is issued by an authorized insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, 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 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 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 16.04.2004 to 15.04.2005 for which premium was paid through cheque on 14.04.2004. The accident occurred on 11.05.2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13.05.2004 on the ground of dishonor of cheque which was received by the owner of the vehicle on 21.05.2004. 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.*
>
> ***28.*** *In view of the above, the judgment of the High Court impugned in the appeal does not call for any interference. The civil appeal is dismissed. However, the insurer shall be at liberty to prosecute its remedy to recover the amount paid to the claimants from the insured. No order as to costs."*

12. **In the present case,** O.P. no.2 has adduced D.W.1 as a witness who is the Senior Branch Manager of the company of the City Branch Office, Cuttak. The relevant part of the deposition is reproduced here :-

> *"……….This is the original letter dated 16.01.2003 sent by our office to Ramani Ballav Mohapatra intimating him regarding dishonour of cheque and*

> *cancellation of policy No. 345101/31/2003/5400 marked as **Exbt. 'A'**. These are two postal receipts collectively marked as **Exbt 'B'**. This is original intimation received from Puri Gramya Bank, Swargadwar Branch regarding dishonour of cheque for "insufficient of fund" bearing No. 210769 amounting to Rs. 15,306/- marked as Exbt 'C'. This is original letter issued by ICICI Bank intimating us regarding dishonour of above cheque marked as **Exbt 'D'.** This is original cheque being No. 210769 dated 13.12.2002 amounting to Rs. 15,306/- of Puri Gramya Bank, Swargadwar Branch issued on behalf of M/s Mahapatra Tours & Travels marked as **Exbt. 'E'.** This is original cancellation of Policy No. 2003/5400 in the name of Ramani Ballav Mohapatra marked as **Exbt 'F'.** This is the carbon copy of receipt being No. 34/404047 dated 13.12.2002 regarding receipt of above cheque marked as **Exbt 'G'.** This is original Register along with copy regarding entry of dishonour cheque maintained in serial No.2 of January 2003 marked as **Exbt 'H'.** (Copy be kept and original Register be returned after completion of cross examination of witness).*
>
> ***CROSS-EXAMINATION**:- Insurance Company generally made between the Insurance Company and the owner. There are another party i.e, Third Party Beneficiary. I have no other documents except Postal Receipt to show that the above letter regarding cancellation of policy as well as dishonour of cheque were received by the owner Ramani Ballav Mohapatra and the Motor Vehicles Department (R.T.O.). Valid period of the cancelled policy was from 13.12.2002 to midnight on 12.12.2003…………"*

13. The accident occurred on 13.08.2003.

14. In the present case, admittedly there is no proof that the *"intimation of such cancellation had reached the insured before the accident"*.

15. Thus, the Insurance Company who issued the policy of Insurance to cover the offending vehicle in this case on receipt of the cheque paid towards premium and subsequently cancelled the same as the cheque was dishonoured, **is liable to pay the compensation in this case,** as the intimation of such cancellation did not reach the insured before the accident.

16. **Para 20** in ***United India Insurance Company Ltd. Vs. Laxmamma & Ors (Supra)*** is as follows:-

> ***"........20.*** *The matter reached this Court from the above judgment of the High Court. The Court referred to Section 64-VB of the Insurance Act, Sections 25, 51, 52, 54 and 65 of the Contract Act and the decisions of this Court in Inderjit Kaur [(1998) 1 SCC 371] and Rula [(2000) 3 SCC 195 : 2000 SCC (Cri) 601] and held as under: (Seema Malhotra case [(2001) 3 SCC 151 : 2001 SCC (Cri) 443] , SCC pp. 156-57, paras 17-20)*
>
> *"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 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 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……….”*

17. The insurer is entitled **to get the money back (pay and recover)** in view of the fact (**Exhibit A to H**) that the Insurance Company duly followed the process for informing the Insured about the said dishonour of cheque and cancellation of the policy.

18. The income of the deceased has been proved to be Rs 12,981 - Rs 110 (Professional tax) = **Rs. 12, 871/- per month (Exhibit 15)** being employed at the Mathabhanga S.D.O. office, Coochbehar. Thus, the income was **Rs, 12,871/- per month**.

19. Age of the victim being **57 years (Date of Birth being 10.07.1946, Ext – 14)** (on the date of accident 13.08.2003), **multiplier 9** is applicable. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121))***

20. **Future prospect** shall be **15%** of established Income. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

21. Number of claimants being **2**, **1/3rd** of the victim's income is to be deducted towards his personal expenses. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)).***

22. General damages of **Rs. 70,000**/- under the conventional heads of Loss of estate: **Rs.15,000**, Loss of consortium: **Rs.40,000**, Funeral expenses: **Rs.15,000**. ***(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).*** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

23. Regarding the tribunal's findings of not having territorial jurisdiction, it is held that the tribunal's finding is erroneous considering that the Insurance Company had a local office within the jurisdiction of court.

24. Thus the **"*Just Compensation*"** in this case would be as follows :-

Monthly Income	*Rs. 12, 871/-*
Annual Income (12, 871 x 12)	*Rs. 1,54,452/-*
*Less : **1/3rd** towards personal and living expenses*	*Rs. 51,484/-*
	Rs. 1, 02,968/-
*Add : Future prospects @ **15%** of the annual income of the deceased*	***Rs. 15,445.2/-***
	Rs. 1, 18, 413.2/-
Multiplier x 9 *(1, 18, 413.2 x 9)*	***Rs.10, 65,718.8 /-***
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	***Rs. 84,000/-***
Total amount:-	***Rs. 11,49, 718.8/-***
Round Off Amount:-	***Rs. 11,49, 719/-***

25. Admittedly, the Claimants have not received any compensation by order of the learned Tribunal as the case was dismissed on the ground of Jurisdiction. Accordingly, the Claimants are now entitled to the **total amount of compensation of Rs.11, 49, 719/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

26. The Respondent No. 1/Insurance Company shall deposit the total amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, **after payment** of the amount for loss of consortium to the appellant/husband, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.

27. **The Respondent No.1/Insurance Company has now prayed for leave to recover** the compensation from the owner/Respondent no. 2 of the offending vehicle (being a Bus) bearing no. **OSP-5619** (insured with the Respondent No.1) on the ground that the Insurance Company duly followed the process for informing the insured about the said dishonour of cheque and cancellation of the policy.

28. The Hon'ble Supreme Court in ***Balu Krishna Chavan vs. The Reliance General Insurance Company Ltd. & Ors., in SLP (C) No. 33638 of 2017, on 3rd November, 2022,*** held as follows ***Para 8 to 14***:-

> *"**8.** Hence, the only aspect for our consideration herein, is as to whether in the facts and circumstances of the present case, an order to direct the Insurance Company to "pay and recover", is required to be made. On this aspect, the law is well settled that if the liability of the Insurance Company is decided and they are held not to be liable, ordinarily, there shall be no direction to "pay and recover". However, in the facts and circumstances arising in each case, appropriate orders are required to be made by this Court to meet the ends of justice.*
> ***9.** In the instant case, the appellant has relied on the judgment dated 21.02.2017 passed by this Court in Civil Appeal No.(s). 3047 of 2017 titled as **"Manuara Khatun & Ors. Vs. Rajesh Kr. Singh & Ors.".** In the said case also, a Bench of this Court, having referred to the earlier decisions in Para-15 and 16 of that Judgment, has concluded that normally, there would be no order to "pay and recover". However, in the said facts, this Court, to meet the ends of justice,*

had taken into consideration the fact situation though, the claimant therein, was a 'gratuitous passenger' and had kept in view that the benevolent object of the Act and had directed the payment by the Insurance Company and to recover the amount.
10. *Therefore, on the legal aspect, it is clear that in all cases such order of "pay and recover" would not arise when the Insurance Company is not liable but would, in the facts and circumstances, be considered by this Court to meet the ends of justice.*
11. *If this aspect of the matter is kept view, in the instant facts, it is noticed that the appellant, as on the date of the accident, was aged about 19 years and due to the injuries suffered in the accident by him, his left leg was amputated below the knee.*
12. *Even, if the contention that the appellant was in the vehicle getting trained to be as a cleaner, is not taken into consideration, the fact remains that any other avocation that is to be undertaken by the appellant would involve physical labour which the appellant will not be able to perform and in such circumstance, if the appellant is not able to realize the amount of compensation awarded in his favour at this stage from the owner of the vehicle, the appellant would be prejudiced. However, the Insurance Company, if ordered to pay to the appellant and recover it from the owner of the vehicle, it would not be prejudiced to that extent.*
13. *Therefore, keeping all aspects in view, and not making this case as a precedent, but, only to serve the ends of justice in the facts of this case, we direct that respondent no. 1 (Insurance Company) to deposit the compensation amount before the MACT within eight weeks from the date of the receipt of a copy of this judgment, whereupon, the MACT shall disburse the amount of compensation to the appellant.*
14. The respondent no. 1 (Insurance Company) is reserved the liberty to recover the compensation from the owner of the vehicle."

29. It is proved (**Exhibit A to H**) that the Insurance Company duly followed the process for informing the insured about the said dishonour of cheque and cancellation of the policy and thus the policy in itself is not valid, but there being no proof of receipt of the said intimation by the owner, prior to the accident in this case, the Respondent No.1/Insurance Company is liable to pay the total compensation and then entitled to recover the total compensation paid, **by due process of law from the owner** of the offending vehicle/the respondent no. 2 herein.

30. **The appeal being FMAT 1064 of 2016 is allowed. The impugned judgment and award of the learned Tribunal under appeal is thus set aside.**

31. All connected applications, if any, stand disposed of.

32. There will be no order as to costs.

33. Interim order, if any, stands vacated.

34. Copy of this judgment be sent to the Learned Tribunal, along with the trial court records, if received.

35. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)