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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
08.11.2024	17.12.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO.4579 OF 2019

1. D.Visalam
2. Minor D.Manikandan
3. Minor D.Bhavani
4. Minor D.Keerthika .. Appellants

(Minor P-2 to P-4 rep. By mother & Natural guardian, P-1)

- Vs -

1. M.Ramasamy

2. TATA AIG General Insurance Co. Ltd.
No.1, Ground Floor, Ethiraj Salai
Egmore, Chennai 600 008. .. Respondents

Civil Miscellaneous Appeal filed u/s 173 of the Motor Vehicles Act seeking enhancement of compensation against the order and decreetal order dated 01.07.2017 made in M.C.O.P. No.4096 of 2013 on the file of the Motor

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Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For Appellants : Mrs. Ramya V.Rao

For Respondents : Mr. J.Michael Visuvasam for R-2
R-1 – Set Ex parte

JUDGMENT

Seeking enhancement of compensation and also for a direction to the insurer, viz., the 2nd respondent herein, to indemnify the owner of the vehicle and to pay the compensation awarded, the present appeal has been directed against the order dated 1.7.2017 passed in M.C.O.P. No.4096 of 2013 by the learned Special Sub Judge, Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

2. The main grievance canvassed by the appellants who are the claimants is that, though the Tribunal had ordered compensation for the death of the deceased in the accident, however, the insurance company, who is 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

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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 and also for enhancement, the aforesaid appeal has been filed.

3. The accident in the aforesaid appeal is not disputed by the parties but the whole case lingers on the cover note, which is alleged to have been issued, but which has not been cancelled in the manner known to law, which, according to the appellants, makes the insurer liable to indemnify the 1st respondent, viz., the owner of the vehicle. In such a scenario, it would suffice if the legality of the issue, as projected before this Court is addressed and there is no necessity to dwell into the facts of the present case.

4. In the aforesaid backdrop with regard to the legality and admissibility of the cover note, it is the submission of the learned counsel for the appellants, who are the claimants in the claim petition that the insurance policy was taken by the owner of the vehicle on 29.04.2013 at 16.25 hours and a cover note was issued under Ex.R-2, as has been produced by the insurer. It

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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 04.05.2013 at about 18.45 hours during which the policy was in subsistence, as the cover note, which had preceded the policy was not cancelled in accordance with the Motor Vehicles Act and, therefore, the insurer is liable to indemnify the owner of the vehicle. However, without appreciating the above, the Tribunal has exonerated the insurer from its liability to pay the compensation and fastened the same on the owner of the vehicle, which is wholly unsustainable. It is the further submission of the learned counsel that the monthly earnings of the deceased, though has been claimed to be Rs.25,000/-, as he was working as Centering worker, however, the Tribunal has, without any proper reason, fixed the monthly income at Rs.10,000/-, which is grossly unreasonable and the same requires to be increased.

5. In support of the aforesaid submissions, learned counsel for the petitioner placed reliance on the following decisions :-

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i) New India Assurance Co. Ltd. – Vs – V.Bommi & Ors. (2009 (2) TN MAC (86 (DB);

ii) Wilson – Vs – Vasantha Kumar & Ors. (2013 SCC OnLine Ker 24581);

iii) Oriental Insurance Co. Ltd. – Vs – A.B.Sivankuty & Ors. (2005 (2) TN MAC (Ker.) (FB) 471); and

iv) United India Insurance Co. Ltd. – Vs – Laxmamma & Ors. (2012 (5) SCC 234).

6. Before the Tribunal, as also before this Court, the 1st respondent, viz., the owner of the vehicle remained absent and, therefore, the 1st respondent was set ex parte before the Tribunal as also before this Court.

7. The submission raised on behalf of the appellants is countered by the learned counsel appearing for the 2nd respondent, viz., insurer of the vehicle by submitting that though a cover note, Ex.R-2 was prepared on 29.04.2013, however, the 1st respondent, viz., the owner of the vehicle, did not give any cheque towards the same and, therefore, the cover note was not issued to the 1st respondent. In this regard, learned counsel drew the attention of this Court to Ex.R-2 to submit that even in the cover note, there is no reference to any cheque, alleged to have been issued and in the absence of issuance of any cheque, the cover note prepared cannot form the basis for indemnifying the

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1st respondent and rightly appreciating the above, the Tribunal had declined to fasten the liability on the 2nd respondent, which does not require any interference at the hands of this Court.

8. It is the further submission of the learned counsel that even otherwise, the said cover note cannot form the basis for holding the insurer liable to pay the compensation, as it would be evident from Ex.R-3, the policy of insurance, which clearly reveals that there is no mention about the cover note in the policy of insurance. The policy of insurance, viz., Ex.R-3 has clearly spelt the period of commencement of insurance, as being 17.20 Hours on 10.05.2013 and, if really the cover note was in force, the policy would have been dated back to 29.04.2013. It is the further submission of the learned counsel that the cover note itself is a fabricated document, as would be evident from the fact that while the cover note, Ex.R-2, spells the financing institution as “Tata Motors Finance Ltd.”, however, the original policy, Ex.R-3 reflects that the policy is not under hypothecation. Therefore, this clearly shows that the cover note has been prepared for extraneous reasons. Therefore, it is prayed that there being no policy in force at the time of the

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accident, the Tribunal has rightly fastened the liability on the 1st respondent, viz., the owner of the vehicle, which does not require any interference.

9. 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.

10. Before proceeding to analyse the legality of the issue canvassed before this Court 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 is 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)***.

11. In *Laxmamma case,* the Supreme Court had considered the liability of the insurer to compensate the victim in cases where the premium was paid

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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 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*

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intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.

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

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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)

12. From the aforesaid decision of the Apex Court, it is implicitly evident that where the accident occurred during the survival of the policy,

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even upon dishonour of the cheque and the communication of the dishonour 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.

13. 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)***.

14. There is no quarrel with the fact that 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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15. 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*

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representation of fact which was false in some material particulars.

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. <u>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</u>. 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<u>. 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</u>."

(Emphasis Supplied)

16. 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

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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 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 make the insurer indemnify the insured by compensating the claimants.

17. The whole case of the appellants is premised on the cover note, Ex.R-2, which, without any qualms, has been marked by the 2nd respondent before the Tribunal, based on which the appellants claim that the insurer is liable to compensate the victims and, thereafter, could recover the amount from the owner of the vehicle.

18. Therefore, it becomes imperative for this Court to find out whether the cover note is a valid document, evidencing that there existed a valid policy on the date of the accident, as the cover note was not cancelled in the manner as mandated under the Motor Vehicles Act, which is specifically pointed out

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by the appellants by relying upon the deposition of R.W.1 in cross examination.

19. There could be no quarrel with the fact that Exs.R-2 and R-3, the cover note as also the policy of insurance have been placed before this Court by the 2nd respondent and it was not marked at the instance of the appellants. Equally, R.W.1, the official of the insurance company has deposed that no material has been placed before the Tribunal to show that necessary intimation was given to the owner of the vehicle, viz., the 1st respondent with regard to the cancellation of the cover note.

20. Normally, a cover note issued pursuant to the receipt of a cheque, which has subsequently been dishonoured, necessarily, the insurance company is bound to intimate the owner of the vehicle before cancelling the cover note. However, is an intimation necessary in the case on hand is the moot question that arises for consideration as according to the 2nd respondent/insurer, the cover note was not at all issued to the owner of the vehicle, as the requisite cheque which has to be given for the cover note to be

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issued, was not at all given by the owner of the vehicle, thereby, the cover note was not at all issued, which was later cancelled.

21. A perusal of Ex.R-2, the cover note, which is the vital document, which is relied on by the appellants, show that the same is alleged to have been issued on 29.04.2013 at 16.20 hours with validity commencing from 16.25 hours on 29.04.2013 to 28.04.2014. The said cover note carries the details of the vehicle and it shown to have been financed by Tata Motors Finance Ltd. and premium is fixed at Rs.37954/-. Though the cover note shows that the same is issued on the basis of a cheque, yet, there are no cheque details which is shown in the cover note.

22. Turning back to Ex.R-3, the original policy, the same has been issued with risk commencing from 17.20 hours on 10.05.2013 and expiring on the midnight of 09.05.2014. The premium paid as per the policy is Rs.37,954/- and the said amount is paid by way of cash/demand draft, as could be seen from the policy document. Curiously, there is no reference to the cover note, which is alleged to have been issued on 29.04.2013.

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23. If really Ex.R-2 had come to be issued on receipt of a cheque from R-1, the cover note would certainly have been referenced in the original policy, Ex.R-3 and that the cover note, Ex.R-2 would also have contained the details of the cheque if the cheque was honoured. If the cheque was dishonoured, then there would arise a necessity for the insurer to advert the procedure contemplated u/s 147 and 149 of the Motor Vehicles Act before cancelling the cover note. However, if no cheque had been issued though a cover note was prepared, without it being issued, what would be the status of the cover note requires to be consideration in the light of the legal provisions envisaged u/s 147 and 149 of the Motor Vehicles Act.

24. It is to be pointed out that in Ex.R-2, there is no reference to any particular cheque having been issued so as to make the cover note a valid one. In this regard, a perusal of Section 147 of the Motor Vehicles Act makes it clear that the procedure with regard to cancellation of a cover note has been provided for only where a cheque has been issued, which has subsequently been dishonoured, in which situation a duty is cast on the insurer to follow the

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procedure with regard to intimation of the dishonour of the cheque and to put on notice the owner of the vehicle as also to the Registering Authority, with regard to the cancellation of the cover note. However, where no cheque has been given towards fulfilment of the terms of payment of the insurance premium, mere preparation of the cover note without it being issued to the owner of the vehicle, would not cast an obligation on the insurer to indemnify the owner of the vehicle.

25. In the aforesaid backdrop of the documents, as held in *Rula case (supra),* it transpires that 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 14 7(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

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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.

26. Therefore, it unambiguously transpires that where the insurance company sends intimation to the owner about the dishonour of the cheque and the cancellation of the cover note before the accident, the insurance company’s liability to indemnify the third parties ceases and the insurance company is not liable to satisfy the award of compensation in respect thereof. Therefore, so long as the policy and cover note is not cancelled by the insurance company, the liability of the insurance company to indemnify the owner stands secured, however, where no cheque has been issued, though a cover note had been prepared without it being issued, there accrues no right for the owner of the vehicle to claim indemnification and the insurance company is not required to pay compensation.

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27. What is very material in the present case is as to whether a cheque was given by the owner at the time of the alleged preparation of the cover note. If really a cheque had been given at the time of preparation of the cover note, necessarily, the rigours of Sections 147 and 149 of the Motor Vehicles Act would come into play, which would require the insurer to follow the procedure prescribed u/s 147 and 149 of the Motor Vehicles Act to cancel the cover note. However, if the cover note was merely prepared without it being issued, as the necessary cheque was not issued by the owner of the vehicle, would the rigours apply with the same force against the insurer to indemnify the owner of the vehicle is the question that requires determination.

28. In ***Deddappa & Ors. – Vs – The Branch Manager, National Insurance Co. Ltd. (2008 (2) TN MAC 138 (SC))***, the obligation of the insurer on the dishonour of the cheque when a cover note stood issued fell for consideration and referencing various decisions on the said issue, the Supreme Court held as under :-

> *"17. We may, however, notice that in terms of sub-section (5) of Section 147 and sub-section (1) of Section*

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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).

19. The said decision proceeded on the basis that it was the Insurance Company which was responsible for placing itself in the said predicament as it had issued a policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64-VB of the 1938 Act. The public interest in a situation of that nature and applying the principle of estoppel, this Court held, would prevail over the interest of the Insurance Company.

20. The ratio of the said decision was, however, noticed by this Court in New India Assurance Co. Ltd. v. Rula and Ors. MANU/SC/0161/2000 : [2000]2SCR148 . It was held that ordinarily a liability under the contract of insurance would arise only on payment of premium, if such payment was made a condition precedent for taking effect of the insurance policy but such a condition which is intended for the benefit of the insurer can be waived by it. It was opined:

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...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.

The dicta laid down therein clarifies that if on the date of accident the policy subsists, then only the third party would be entitled to avail the benefit thereof.

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

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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. 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

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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.

* * * * * * *

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. 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)

29. 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

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performed by the insurer only on the insured performing his part of the promise. Therefore, upon issuance of a cheque and the same being honoured, the insurer is bound to indemnify the insured. On the contrary, the cheque, which is issued, if gets dishonoured, the insurer is not bound to indemnify the insured, provided the insurer follows the provisions of Sections 147 and 149 of the Motor Vehicles Act by putting the insured and the Registering Authority on notice about the cancellation of the cover note. Non-intimation to the owner of the vehicle and the Registering Authority would not absolve the insurer of its liability from payment of compensation.

30. In the present case, the 1st respondent, viz., the owner of the vehicle has not come before this Court and claimed that he had issued a cheque and a cover note was issued and, therefore, the 2nd respondent is bound to indemnify the 1st respondent; rather, the cover note as also the policy of insurance, Exs.R-2 and R-3 have been placed before the Tribunal by the insurer and it is the specific case of the insurer that though the cover note was prepared, the same was not issued, as the cheque towards the payment of premium was not parted with by the owner. The said contention gains

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weight from the fact that though the details of the vehicle have been given in the cover note relating to the vehicle, which is to be insured, however, there is no mention about the cheque, which has been given towards the premium to be paid for such coverage.

31. In the aforesaid scenario, the decision in *Rula (supra),* which has been referred to in *Deddappa (supra),* squarely stands attracted to the present case, as the liability of the insurer to indemnify the insured only comes into effect upon payment of premium, which is a condition precedent for the policy taking effect. However, in the present case, the cover note does not spell out the details of the cheque, which is alleged to have been issued. Further, the 1st respondent, viz., the owner of the vehicle also has not come before this Court with such a plea of a cover note having been issued and even the cover note was placed only by the 2nd respondent, viz., the insurer and not by the appellants or the 1st respondent/owner of the vehicle. Therefore, in the absence of any material evidencing the issuance of a cheque, dishonour of cheque would not come into play and only when the cheque stands dishonoured, only in such a scenario, the insurer is bound to comply with the

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procedure contemplated u/s 147 of the Motor Vehicles Act before cancelling the cover note and where no cheque has been given and no cover note has been issued to the owner of the vehicle, though a cover note was allegedly prepared, the same would not in any way give any benefit either to the insured or to the third party to claim compensation at the hands of the insurance company. Mere preparation of cover note without payment of premium would not clothe the third party to claim any compensation at the hands of the insurer.

32. As clearly spelt out in the decision in *Deddappa case (supra)*, a contract of insurance is based on reciprocal promise and that reciprocal promises by the parties are condition precedent for a valid contract and that the contract must be for consideration. Where in a case the consideration has not exchanged between the parties, there arises no question of reciprocal promise, thereby, putting the shackles on the insurer to pay the compensation on behalf of the insured to the third party and to subsequently recover the same from the insured/owner of the vehicle. Giving any such leverage would defeat the very provisions of the Motor Vehicles Act, more particularly Section

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147 and also put the insurance companies in jeopardy, as such leverage would lead to catastrophic results with fabrication of cover notes, though such procedure of issuance of cover notes, has since been withdrawn. Therefore, clearly in anticipation of such large scale fabrication, the issuance of cover notes had been done away with and such being the case, mere preparation of cover note without there being any exchange of monetary consideration between the insurer and the insured would not in any way put the 2nd respondent, viz., insurer in the shoes of the insured so as to honour the compensation awarded by the Tribunal.

33. True it is that the Motor Vehicles Act is a benevolent legislation aimed at reducing the misery of the family, which is facing turbulent times due to the death of its breadwinner. However, this Court, though, could only sympathise with the family of the deceased cannot stretch the law to such an extent, which would otherwise defeat justice, by defying logic. Mechanisms have been created for realising the compensation from the owner of the vehicle and the family of the deceased has to resort to the said mechanism and it would not be reasonable to always push the insurance company to

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compensate the claimants and go behind the owner of the vehicle to realise the compensation, when the insurance company is in no way connected with the vehicle, which has caused the accident.

34. Rightly appreciating the materials placed before it, the Tribunal has directed the owner of the vehicle, viz., the 1st respondent to pay the compensation by absolving the 2nd respondent, viz., the insurer from paying the compensation. The said finding is based on proper and just reasonings and appreciation of materials and this Court does not find any perversity to interfere with the said findings, in view of the discussion made above. Therefore, this Court is not inclined to interfere with the order of the Tribunal directing the owner of the vehicle/1st respondent to pay the compensation quantified by the Tribunal for the death of the deceased.

35. Insofar as the enhancement of compensation sought for by the appellants, more particularly, with regard to fixing the monthly income of the deceased, the Tribunal has fixed the monthly income of the deceased at Rs.10,000/- and calculated the loss of income to the family. The appellants, by

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contending that the deceased was working as Centering Worker was earning a sum of Rs.25,000/- per month and sought fixation of the said sum for quantifying the loss to the family.

36. Though the appellants have claimed fixation of monthly income at Rs.25,000/-, yet it is to be pointed out that no materials have been placed before this Court to show that the deceased was earning any such amount. There is no iota of proof filed by the appellants, either before the Tribunal or before this Court to claim that the monthly income of the deceased was Rs.25,000/-. In the absence of any material evidencing the monthly income of the deceased, adopting notional income of Rs.10,000/-, the Tribunal has arrived at the loss of income to the family, which course cannot be found fault with. The above course adopted by the Tribunal is based on the ratio laid down by the Apex Court in ***Syed Sadiq & Ors. – Vs – United Indi Insurance Co. Ltd. & Ors. (MANU/SC/0033/2014),*** with regard to fixation of notional income and the same cannot be found fault with. Accordingly, this Court is of the considered view that no interference is warranted with regard to the fixation of notional income at Rs.10,000/- per month.

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37. Insofar as the award of compensation on the other heads are concerned, a perusal of the award reveals that the compensation awarded under the various heads are just and reasonable and by no means could it be claimed that the compensation under the said heads are low. Therefore, no interference is warranted with the compensation awarded under the other heads as well.

38. For the reasons aforesaid, there are no merits in the present appeal and, accordingly, the same stands dismissed by confirming the compensation awarded by the Tribunal. It is open to the appellants/claimants to take recourse to law for realising the compensation from the owner of the vehicle, viz., the 1st respondent herein, in the manner known to law. No costs.

17.12.2024

Index : Yes / No
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To

Special Sub Judge

Motor Accident Claims Tribunal

Special Sub Court No.1

Small Causes Court, Chennai

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M.DHANDAPANI, J.

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PRE-DELIVERY JUDGMENT IN
C.M.A. NO.4579 OF 2019

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