

**IN THE HIGH COURT AT CALCUTTA
CIVILAPPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 246 of 2023

HDFC ERGO General insurance Co. Ltd.

-Vs-

Kehabali Bibi & Ors.

And

FMA 366 of 2023

HDFC ERGO General insurance Co. Ltd.

-Vs-

Kehabali Bibi & Anr.

For the Appellant/
Insurance Company

: Mr. Rajesh Singh

For the Respondents/
Claimants

: Mr. Amit Ranjan Roy

Heard and Judgment on : 06/05/2025

Ananya Bandyopadhyay, J.:-

1. The instant appeal was heard earlier and judgment was reserved. However, the matter was listed under the heading **“For Hearing”** for further clarification.
2. The learned advocates representing both the parties are present.
3. Three Respondents/Claimants in FMA 246 of 2023 filed an application under Section 166 of the M.V. Act in the Court of Additional District Judge Cum Motor Accident Claims Tribunal Court, Katwa being MAC Case No. 31/2017 claiming an award of Rs.10,00,000/- and one Respondent/Claimant in FMA 366 of 2023 filed an application under Section 166 of the M.V. Act in the Court of Additional District Judge Cum Motor Accident Claims Tribunal Court, Katwa being MAC Case No. 54/2017 claiming an award of Rs.1,00,000/- as well as interest whereby the

aforesaid deceased expired due to a road traffic accident on 20.03.2017 at about 5:30 pm. The offending vehicle, one mini truck bearing Registration No. WB-53/B/6642 hit the aforesaid victim, who was riding in a van, rashly and negligently on Katwa Kalna Road near Garagacha. Consequently, the victim passed away. The post mortem was performed at Katwa S.D. Hospital. Subsequently, based on a complaint, Katwa P.S. Case No. 161/2017 dated 08.04.2017 was instituted against the driver of the offending vehicle, as aforesaid.

4. The owner of the offending vehicle did not contest the case. The respondent, HDFC ERGO General insurance Company Ltd. contested the aforesaid MAC case.
5. The Learned Tribunal, as aforesaid, disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs. 12,12,400/- with interest at the rate of 6% per annum in FMA 246 of 2023 and awarded a sum of Rs.38,327/- with interest at the rate of 6% per annum in FMA 366 of 2023.
6. The Learned Advocate representing the Appellant/Insurance Company submitted that the offending mini Truck No. WB 53/B/6642 was not insured with the Appellant/Insurance Company. The owner of the offending mini Truck No WB 53/B/6642 issued a premium cheque for the coverage of the said vehicle which was dishonoured by his bank for 'funds insufficient' and as no premium was paid by the owner in connection with the said vehicle, as per policy conditions, the insurance policy, if at all, issued was cancelled with effect from its inception. The Appellant/Insurance Company in its written statement specifically pleaded that the premium cheque was

dishonoured for insufficient funds. In view of the violations of the provisions of Sec. 64B of the Insurance Act, 1938 when the Insurance Company did not receive premium. Once the premium cheque had been dishonoured, the liability of the Insurance Company ceased to exist, and it could not be forced to indemnify the insured, who had deliberately chosen to not to pay the insurance premium. The complaint regarding the accident dated 20.03.2017 was lodged only on 08.04.2017 i.e. - 20 days after the accident, meaning thereby that the mini Truck No. WB-53/B/6642 was subsequently implanted in collusion with its owner and concerned authorities to gain illegal compensation from its insurer. The Learned Tribunal arbitrarily assessed victim's income at Rs.6,000/- per month without any documentary evidence which was excessive.

7. The Hon'ble Supreme Court held the following in ***Oriental Insurance Co. Ltd. v. Inderjit Kaur***¹

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.

10. *The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured.*

11. *We may note in this connection the following passage in the case of Montreal Street Rly. Co. v. Normandin [AIR 1917 PC 142] :*

“When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.”

12. *It must also be noted that it was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64-VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant.*

8. The Hon’ble Supreme Court held the following in **National Insurance Co. Ltd. v. Seema Malhotra**²:-

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.*

9. The following was held by the Hon'ble Supreme Court in ***United India Insurance Co. Ltd. v. Laxmamma***³

17. *In New India Assurance Co. Ltd. v. Rula [(2000) 3 SCC 195 : 2000 SCC (Cri) 601] , the Court was concerned with a question very similar to the question posed before us. That was a case where the insurance policy was issued by the New India Assurance Co. Ltd. in terms of the requirements of the MV Act but the cheque by which the owner had paid the premium bounced and the policy was cancelled by the insurance company but before the cancellation of the policy, accident had taken place. A two-Judge Bench of this Court considered the statutory provisions contained in the MV Act and the judgment in Inderjit Kaur [(1998) 1 SCC 371] . In para 13, the Court held as under: (Rula case [(2000) 3 SCC 195 : 2000 SCC (Cri) 601] , SCC p. 200)*

“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

³(2012) 5 SCC 234

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.”

(emphasis supplied)

18. *In Seema Malhotra [(2001) 3 SCC 151 : 2001 SCC (Cri) 443] , the Court was concerned with the question whether the insurer is liable to honour the contract of insurance where the insured gave a cheque to the insurer towards the premium amount but the cheque was dishonoured by the drawee bank due to insufficiency of funds in the account of the drawer. In Seema Malhotra [(2001) 3 SCC 151 : 2001 SCC (Cri) 443] , the above question arose from the following facts: the owner of a Maruti car entered into an insurance contract with the National Insurance Co. Ltd. on 21-12-1993; on the same day the owner gave a cheque of Rs 4492 towards the first instalment of the premium; the insurance company issued a cover note as contemplated in Section 149 of the MV Act; the car met with an accident on 31-12-1993 in which the owner died and the car was completely damaged; on 10-1-1994 the bank on which the cheque was drawn by the insured sent an intimation to the insurance company that the cheque was dishonoured as there were no funds in the account of the drawer and on 20-1-1994 the business concern of the owner was informed that the cheque having been dishonoured by the bank, the insurance policy is cancelled with immediate effect and the insurance company is not at risk.*

19. *The widow and children of the owner filed a claim for the loss of the vehicle with the insurance company. When the claim was repudiated, they moved the State Consumer Protection Commission*

(for short “the Commission”). The Commission rejected the claim of the claimants and held that the insurer was justified in repudiating the contract as soon as the cheque got bounced. The claimants moved the Jammu and Kashmir High Court. The High Court reversed the order of the Commission and held that the insurance company chose to cancel the insurance policy from the date of issuance of communication and not from the date the cheque was issued which got bounced.

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.”

21. In Deddappa [(2008) 2 SCC 595 : (2008) 1 SCC (Cri) 517 : (2008) 1 SCC (Civ) 638] , the Court was concerned with the plea of the insurance company that although the vehicle was insured by the owner for the period from 17-10-1997 to 16-10-1998 but the cheque issued therefor having been dishonoured, the policy was cancelled and, thus, it was not liable. That was a case where for the above period of policy, the cheque was issued by the owner on 15-10-1997; the bank issued a return memo on 21-10-1997 disclosing dishonour of the cheque with remarks “fund insufficient” and the insurance company, thereafter, cancelled the policy of insurance by communicating to the owner of the vehicle and an intimation to the RTO concerned. The accident occurred on 6-2-1998 after the cancellation of the policy.

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.

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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.

10. In **National Insurance Co. Ltd. v. Balkar Ram**⁴the following was held by the Hon'ble Supreme Court:-

However, we compliment Ms. Kiran Suri, learned counsel for the appellant for cutting short the controversy by fairly pointing out the ratio of the judgment (2012) 5 SCC 234 titled United India Insurance Co. Ltd. v. Laxmamma wherein it has been held that the insurance company is liable to satisfy the award if the intimation regarding the dishonour of the cheque and cancellation of policy is communicated to the policy-holder after the date of the accident. Thus, the defence of the insurance company that the policy of insurance was not valid since the cheque had been dishonoured prior to the accident would not exonerate them from making the payment of compensation.

11. A Division Bench of the Hon'ble High Court of Calcutta held the following in

Pranab Kumar Mitra and Ors. vs. Oriental Insurance Co. Ltd. and Ors.⁵

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 10.1.2001 about cancellation. Accordingly, in our opinion the policy is deemed to have remained valid and subsisting until 10.1.2001

12. The following was held by a Full Bench of the **Hon'ble High Court of**

Kerala in Oriental Insurance Co. Ltd. vs. Sivankutty⁶

"19. It has to be remembered that the Supreme Court made the above observations while appreciating the facts in that particular

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case accepting and following the decision in *Inderjit Kaur's case* (1998 (1) KLT (SC) 23 : AIR 1998 SC 588) in which it was laid down that despite the bar created by Section 64-VB of the Insurance Act, the authorised insurer who issued policy of insurance to cover the bus without receiving the premium thereof, became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy the awards of compensation in respect thereof by reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, notwithstanding its entitlement to avoid or cancel the policy for the reason that a cheque issued in payment of premium thereon had not been honoured.

20. Neither from the three member decision of the Apex Court in *Inderjit Kaur's case* (1998 (1) KLT (SC) 23 : AIR 1998 SC 588) nor from the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, 1988 do we get any support to hold the view that the liability to pay compensation for injuries sustained to third parties ceases to exist after the cancellation of the policy. The situation is not akin to that of an owner of a vehicle not having taken any insurance at all for the vehicle as on the date of the accident, as is observed by the Division Bench of this Court in *New India Assurance Co. Ltd. v. Raghu* (2001 (3) KLT 515). We therefore hold that the decision of the Division Bench of this Court in *New India Assurance Co. Ltd. v. Raghu* (2001 (3) KLT 515) does not lay down the correct law. The position is that the liability of the Insurance Company in damages for third party risks continues for the entire period covered by the policy in spite of the cheque issued towards payment of premium was dishonoured and consequently policy was cancelled by the Insurance Company. The remedy of the Insurance Company lies against the "insured" to have the amount paid by them by way of compensation for third party risks to be got reimbursed."

13. Heard the learned advocates representing both the parties and considered the materials on record.
14. Since, the occurrence of the accident, involvement of the offending vehicle, the driving licence, insurance certificate etc. are not disputed by the Learned Advocate representing the Respondent/Insurance company, this Court restricts itself only to the extent of issues agitated by the Learned Advocates representing both the parties.
15. The Learned Advocate representing the Respondents/claimants submitted the Appellant/Insurance Company did not adduce any evidence that the insured received the notice of cancellation of insurance policy and, therefore, the appellant insurance company could not claim to be relieved from the liability to pay the compensation awarded.
16. In paragraph 8 of the written statement filed by the Appellant/Insurance company before the learned tribunal, it stated that :-

“Immediately after knowing the fact we intimated the insured Shakti Hazrati his respective address about the same vide letter dated 11/01/2017 and cancelled the policy ab initio and mentioned that the company shall not be responsible for any liability of any nature what so ever from the date of inception that is 19/12/2016”

17. During cross examination OPW-1 deposed as follows:-

“We received the cheque from owner on 18.12.2016. The policy was issued on 4.1.17. Ext. is a continuation policy. We did not issue any notice to the owner after the cheque was dishonoured due to insufficient fund. I do not have any document to show that the owner received intimation that cheque was dishonoured. We did not lodge any complaint before any P.S.

alleging fraud against the owner. Not a fact that we cancelled the policy after the cheque was bounced. If any cheque is dishonoured and intimation has been served upon the owner of the vehicle, he may pay the same by way of cash which we accept.....”

18. Since there was an indubitable and indisputable affirmation on the part of the OPW-1 pertaining to denial to issue notice to the owner after the cheque was dishonoured in absence of any document to evince the owner received intimation that the cheque deposited by the same against payment of insurance policy was dishonoured, the OPW-1 contradicted his own evidence in paragraph 8 of the written statement as cited above. The Appellant/Insurance company did not lodge any complaint before any police station alleging fraud on the part of the owner. Such admission on the part of the Appellant/Insurance Company disentitled the same to exercise the right to recover the compensation from the owner of the offending vehicle, as it had been opined by OPW-1 that in case a cheque was dishonoured, an intimation was served upon the owner of the vehicle, the same may pay the insurance premium by way of cash, which could be accepted by the appellant insurance company.
19. In the instant case, the appellant insurance company failed to prove coupled with the denial of the OPW-1 to have served notice and/or intimation to the owner of the offending vehicle that the cheque was dishonoured.
20. In view of the aforesaid observations, this court is not inclined to interfere with the impugned order and judgement passed by the learned tribunal. However, the Appellant/Insurance Company will be at liberty to recover the compensation award from the owner of the offending vehicle on considering

proof that the notice of cancellation of the insurance policy was communicated to the owner of the offending vehicle and the same was received by him.

21. According to the impugned judgments passed by the Learned Tribunal in FMA 246 of 2023, the Respondent Nos. 1 to 3/claimants are entitled to receive a sum of Rs.12,12,400/- and in FMA 366 of 2023, the Respondent No.1 is entitled to receive a sum of Rs.38,327 (Rs.12,12,400/- + Rs.38,327) = Rs.12,50,727 at the rate of 6% per cent per annum from the date of filing of the claim application till the date of its actual realization.
22. The learned Advocate representing the Appellant/Insurance Company in FMA 246 of 2023 submits to have deposited a sum of Rs.16,48,470 = (Rs.25,000/- + Rs.16,23,470/-) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company
23. The learned Advocate representing the Appellant/Insurance Company in FMA 366 of 2023 submits to have deposited a sum of Rs.51,887 (Rs.25,000/- + Rs.26,887/-) through two separate cheques as per challan filed by the learned advocate representing the appellant/insurance company.
24. The office of the Registrar General, High Court, Calcutta shall encash the cheques and, thereafter, disburse the same to the present Respondent Nos. 1 to 3/claimants, as mentioned in the award passed by the Additional District Judge Cum Motor Accident Claims Tribunal Court, Katwa in MAC Case No. 246/2023 and the Respondent no.1/Claimant in FMA 366 of 2023 on proof of proper identification of the respondents/claimants subject to payment of ad valorem Courts fees and refund the balance amount, if any,

through a cheque to the Learned Advocate representing the Appellant/Insurance company for the accounts of the insurance company.

25. The interest generated on the sum deposited by the Appellant/Insurance company at the office of the Learned Registrar General, High Court at Calcutta, which has already been deposited in the Nationalized Bank by the office of the Learned Registrar General, High Court at Calcutta is to be apportioned and the sum of interest accrued on the aforesaid amount is to be disbursed in favour of the Appellant/Insurance company.

26. The instant appeals are disposed of accordingly.

27. The TCR be sent down to the concerned Tribunal forthwith.

28. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

S.R. (A.R.C.)