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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 08th January 2026*+ **MAC.APP. 465/2015****ORIENTAL INSURANCE CO LTD**

.....Appellant

Through: Mr. Pradeep Gaur, Advocate with Mr.
Amit Gaur, Advocate.

versus

ASHA RANI & ORS

.....Respondent

Through: Mr. Ramesh Chander and Ms. Divya,
Adv. for R-1 along with R-1 in
person.**CORAM:****HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J: (ORAL)**

1. This appeal has been filed by the appellant/Insurance Company challenging the final award dated 04th April 2015, passed by the Motor Accident Claim Tribunal [“**MACT**”] (North West District) Rohini Courts, Delhi in *MACT Petition no. 336/2009* titled as “**Asha Rani v. Sukhdev Singh & Ors**”.

2. The claim petition was filed under *Section 163A* of the Motor Vehicles Act 1988 [“**MVAct**”] by the claimant [respondent no. 1 herein], who was the mother of *Sh. Mannu @ Munnu* [the deceased], against *Sh. Sukhdev Singh* [respondent no.2 herein], the driver of the offending vehicle, and *Shri Pardeep Singh* [respondent no. 3 herein], the registered owner of the offending vehicle, and the *Oriental Insurance Company* [appellant



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herein], the insurer of the offending vehicle. She claimed compensation to the tune of Rs.15,00,000/- in her favour from the date of filing of the petition till realization.

3. The incident occurred on 29th June 2006 at about 2:00 P.M., when the deceased was working as a conductor on the offending vehicle along with two drivers and was on duty. The offending vehicle suffered an accident on the highway in Bangalore; the driver of the offending vehicle having driven it in a rash and negligent manner. The vehicle climbed the divider and fell on the left side, due to which the deceased sustained injuries and died on the spot.

4. FIR was registered at *Police Station Nelamangla, Bangalore*. During the pendency of the proceedings, *Sh. Sukhdev Singh*/respondent no.2, the driver, passed away, and his name was deleted from the array of parties. The owner of the offending vehicle, *Shri Pradeep Singh*/respondent no.3. was proceeded *ex parte*.

5. The Insurance Company/ appellant filed its written statement and the matter was adjudicated by the Tribunal. An objection was raised by the Insurance Company/ appellant before the Tribunal that there was no valid insurance policy in relation to the offending vehicle. For this purpose, evidence was led on behalf of Insurance Company/ appellant by **R3W1**, *Mr. Rajesh Arya, Assistant Manager*, stating that the Cover Note had been supplied to the owner of the vehicle, *Shri Pardeep Singh*, and a *cheque No. 785944* for Rs. 1,23,720/- drawn on Canara Bank, Rohini Branch, was issued towards the payment of premium for various vehicles including the offending vehicle.



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6. The cheque, however, was returned unpaid due to insufficient funds on 24th June 2006, and, accordingly, the Cover Note was cancelled and the owner and Regional Transport Office [RTO] was duly informed. A copy of the cancelled policy had been placed on record along with the original cheque, return memo and the cancelled policy cover note.

7. **R3W1**, *Mr. Rajesh Arya*, was cross-examined by the claimant's counsel but was not cross-examined by the owner.

8. This aspect was assessed by the Tribunal as part of Issue no.2. Based on the contention made by the owner of the vehicle/respondent no.3, that he had deposited the amount *in cash* towards the insurance of the offending vehicle, the Tribunal was of the opinion that the owner was under a genuine impression that his vehicle was validly insured and that he would have paid the premium had he received intimation regarding dishonour of the cheque.

9. Based on these facts and circumstances, the Tribunal concluded that the offending vehicle was duly insured and decided the issue against the Insurance Company/appellant. As regards the quantum of compensation, the Tribunal assessed the same as under:

Sl. No.	Compensation under various heads	Amount awarded
1.	Loss of dependency	Rs.4,16,000/-
2.	Funeral expenses	Rs. 2,000/-
3.	Loss of estate	Rs.2,500/-
4.	Total	Rs. 4,20,500/-

10. Counsel for the respondent no.1/claimant states that the “*multiplier of 16*” was used by the Tribunal even though the age of the deceased was ‘18



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years', and no loss of consortium or compensation for future prospects was granted.

11. *Mr. Pradeep Gaur*, counsel for the appellant, submits that they have no objection to the compensation amount being released in favour of respondent no.1, considering that this is an old case and respondent no.1 is 65 years of age, being the mother of the deceased, and that there is no one else alive in the family including her husband and two sons. However, this is subject to a direction from this Court that the Insurance Company/appellant shall have a right of recovery against the owner of the vehicle.

12. Counsel for respondent no.1 has no objection to this extent and makes a statement to this effect on instructions (*respondent no.1, Smt. Asha Rani, being present in Court*).

13. On the examination of the evidence in-chief filed on behalf of respondent no.3, it transpires that *cheque no.785944* was returned unpaid due to insufficient funds on 24th June 2006, and the cheque return memo was exhibited as **Ex. R3W-1/D** along with the cancelled policy/cover note exhibited as **Ex. R3W-1/E**.

14. It has been noted in the impugned award that the owner of the vehicle had deposited the amount in cash in the bank for insurance of the offending vehicle on 30th June 2006. However, since the accident occurred on 29th June 2006, the deposit of cash on a later date would not validate the policy retrospectively.

15. In this regard, counsel for appellant has placed reliance on a decision of the Supreme Court in *National Insurance Co. Ltd. v. Yellamma*, (2008) 7 SCC 526, delivered on 6th May 2008. The facts of the case were that an



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insurance policy was sought to be taken by the owner of a mini bus and the cheque was issued towards insurance premium. However, the Cover Note was later returned and the cheque was taken back. The question as to whether the policy would be valid despite the non-payment of premium was considered up by the Supreme Court. Relevant findings are extracted as under:

“13. The question came up for consideration recently before this Court in Deddappa v. National Insurance Co. Ltd. [(2008) 2 SCC 595 : (2008) 1 SCC (Cri) 517] wherein upon noticing the precedents which were operating in the field, it was clearly held: (SCC pp. 599-600, paras 18-20)

“18. The ratio of the said decision was, however, noticed by this Court in New India Assurance Co. Ltd. v. Rula [(2000) 3 SCC 195 : 2000 SCC (Cri) 601]. 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: (SCC p. 200, para 13)

‘13. ... 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



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third party would be entitled to avail the benefit thereof.

19. Almost an identical question again came up for consideration before this Court in National Insurance Co. Ltd. v. Seema Malhotra[(2001) 3 SCC 151 : 2001 SCC (Cri) 443] and 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: (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



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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.'

20. 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."

14. In today's world payment by cheque is ordinarily accepted as valid tender but the same would be subject to its encashment. A distinction, however, exists between the statutory liability of the insurance company vis-à-vis the third party in terms of Sections 147 and 149 of the Motor Vehicles Act and its liability in other cases but it is clear that if the contract of insurance had been cancelled and all concerned had been intimated thereabout, the insurance company would not be liable to satisfy the claim.

15. In this case, there cannot be any doubt or dispute whatsoever that no privity of contract came into being between the appellant and the second respondent and as such the question of enforcing the purported contract of insurance while taking recourse to Section 147 of the Motor Vehicles Act did not arise."

(emphasis added)

16. The Supreme Court has held that where the insured fails to pay the promised premium or where the cheque issued towards premium is dishonoured, the insurer is not required to perform its part of the promise,



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and even if any amount had been disbursed under the policy, the insurer would be entitled to recover the same.

17. A contract for insurance does not crystallize if made without consideration. Considering that the accident took place on 29th June 2006 and there was no consideration provided for the insurance policy as on that date, and even as per the owner of the vehicle who deposited cash only on 30th June 2006, the tenets of the above decision shall fully apply in the present case. The Insurance Company would thus be entitled to seek a right of recovery against the owner of the vehicle, respondent no.3 herein.

18. As regards the quantum of compensation, granted through the claimant, it is noted that the compensation has been awarded as per the structured formula under *Section 163A* of MV Act, and the multiplier must be applied as per the Second Schedule, which prescribes a multiplier of 16 for age group above 15 years and below 20 years.

19. Accordingly, reliance placed on *Sarla Verma v. DTC*, (2009) 6 SCC 121, to show that for the age group of 15 to 20 years, the applicable multiplier would be 18 cannot be accepted.

20. In terms of the discussion above, it is therefore directed that the Insurance Company/appellant shall have a right of recovery against the owner of the vehicle.

21. It is further directed that entire compensation amount alongwith accrued interest be released in favour of respondent no.1, by Registry of this Court/*UCO Bank Delhi High Court Branch, New Delhi*, where the amount was deposited pursuant to directions passed by this Court on 28th May 2015. A copy of this order be sent to the *Assistant General Manager, UCO Bank*



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for compliance and processing.

22. Statutory amount along with accrued interest shall be released to the appellant.

23. The appeal stands disposed of accordingly.

24. Pending applications, if any, are also rendered infructuous.

25. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 8, 2026/RK/tk