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Delhi High Court

A.K SIKRI, J.

Paras v. Kamal Kishore

MAC. App. No. 598 of 2006

26.08.2011

Motor Vehicles Act, 1988 S. 166 – Insurance – Cancellation of – Cheque bounce – Liability of Insurance Company gets cancelled only when all concerned have been intimated about the cancellation of the insurance policy – That did not occur in the instant case – Insurance Company is liable to pay the compensation to the appellant, though it may recover the same from the owner driver .

Policy of Insurance Company that the Insurance Company issues is a representation upon which the Authorities and third party are entitled to act. Therefore, even if the cheque given by the insurer is bounced, insofar as Insurance Company is concerned, it has not absolved its obligation to third party under the policy. The remedy which is provided to the Insurance Company is to recover the said liability from the insurer, but it has to discharge its liability towards the third party

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A.K SIKRI, J. (ORAL) – The Appellant filed a claim petition under section 166/140 of the Motor Vehicles Act, 1988 (for short, 'The 1988 Act') before the Motor Accidents Claims Tribunal, Delhi. (for short, 'The Tribunal') claiming compensation for the permanent partial disability suffered by the appellant as a result of an accident due to the negligence of respondents and claimed Rs. 10,07,000/- from the Respondent 1 (driver), Respondent no. 2 (owner), and insurer (insurance company).

2. The facts of the case are that on 3.7.93 at about 1.30 A.M, near Shastri Nagar Kura ghar, while the appellant was sitting on the front portion of the cycle danda (frame) which his friend was driving, a truck bearing registration number DLG 3445 came from behind rashly & negligently at fast speed and struck against the cycle which resulted in the petitioner sustaining three fracture on his right leg. He has been permanently partially disabled to the

extent of 20% from the femur portion of the right leg. He claimed a compensation of Rs. 10,07,000/- from the respondents.

3. The respondents filed written statements. The Respondent No. 1 stated that the vehicle was insured with National Insurance Company, Azadpur Branch with the cover note policy bearing no. 0418284 valid from 28.7.92 to 27.7.93 therefore, the liability is that of the Respondent no. 3 (Insurance company). He further took a defence that the accident took place due to the negligence on part of the injured himself. Respondent no. 2 also filed the written statement on same line.

4. Respondent No. 3 denied the liability on the ground that the cover note was issued in the name of Teja Singh and the premium was paid by way of cheque. The cheque towards the premium was sent for encashment. However, it was dishonored and the cover note was cancelled right from the very inception, hence there was no liability. It was further stated that no claim intimation was lodged with them.

5. The appellant examined himself as PW-3 after he attained the age of majority. Witnesses from Hindu Rao Hospital and St. Stephens Hospital were produced along with documents who proved the injuries suffered by the appellant as well as medical treatment which was accorded to the appellant as a result thereof. The respondents failed to lead any evidence in support of various particular and ultimately their evidence was closed. On the basis of unrebutted evidence led by the appellant, the learned Tribunal held that the accident took place on account of rash and negligent act of the driver of the truck. Thereafter, the learned Tribunal went on to calculate the compensation, which was payable in this case. Though it was found that as per the record of Hindu Rao Hospital, age of the appellant was stated to be 10 years while on the record of St. Stephens Hospital, the age of the appellant was 13 years, the learned Tribunal found that the correct age of the appellant was 13 years. The Tribunal, on the basis of record, also returned a finding of the fact that the appellant had suffered disability to the extent of 5% and deemed it appropriate to take 5% of future income as loss. The Tribunal, on the basis of the aforesaid injuries, applied Multiplier of 16. On this basis, loss of income was calculated at Rs. 18,595.00 (1937 × 12 × 16 × 5%). On this compensation, he added expenses incurred by the appellant on medical treatment, pain and sufferings, loss of amenity of life as well as loss of marriage prospects. Details whereof are as under:

“Loss of income (1937 × 12 × 16 × 5%) Rs. 18,595.00

Expense incurred in billing Rs. 25,000.00

Pain and Sufferings Rs. 15,000.00

Loss of amenity of life Rs. 10,000.00

Loss of marriage prospects Rs. 10,000.00

Total = Rs. 78,595.00”

6. The Tribunal rounded off the compensation to Rs. 80,000/-, which was awarded to the appellant against the Respondent No. 1 & 2 holding them jointly and severally liable to pay the compensation and interest @ 5.5% from the date of filing of the petition till its realization.

7. Insofar as the respondent No. 3.Insurance Company is concerned, the learned Tribunal absolved it from any obligation to pay compensation on the ground that the cheque for Insurance Company given by the respondent No. 2 had been dishonoured and therefore, there was no proper insurance and insurance company was not liable to pay any compensation.

8. The appellant has challenged the award passed by the Tribunal before this Court by way of this appeal. The appellant wants Insurance Company to be liable and aggrieved by lower rate of interest awarded. The issues for consideration in this appeal are as follows:

(i) Whether the Respondent No. 3 (insurance company) is absolved of its obligations to third party (appellant) under the policy because it did not receive the premium, due to the reason that the cheque issued by Respondent No. 2 is dishonored?

(ii) Whether the interest 5.5% awarded by the Tribunal would be increased as to meet the ends of Justice?

9. As far as the first question is concerned, the appellant relied upon the decision in the case of Oriental Insurance Co. Ltd. v. Inderjit Kaur, 1998 ACJ 123. It was submitted on the basis of the aforesaid pronouncement of the Supreme Court that the policy of Insurance Company that the Insurance Company issues is a representation upon which the Authorities and third party are entitled to act. Therefore, even if the cheque given by the insurer is bounced, insofar as Insurance Company is concerned, it has not absolved its obligation to third party under the policy. The remedy which is provided to the Insurance Company is to recover the said liability from the insurer, but it has to discharge its liability towards the third party. The provisions of Motor Vehicles Act, 1988 as well as discussions of the Tribunal, in this behalf, is contained in the following passages in the said judgment:

“7. Chapter 11 of the Motor Vehicles Act, 1998, provides for the insurance of motor vehicles against third party risks. Section 146 thereunder states that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle a policy of insurance that complies with the requirements of the chapter, Section 147 sets out the requirements of policies and the limits of liability. A policy of insurance, by reason of this provision, must be a policy which is issued by a person who is an authorised insurer. Sub-section 5 reads thus:

“(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.”

Section 149 refers to the duty of insurers to satisfy judgments and awards against persons

insured in respect of third party risks. Subsection (1) thereof reads thus:

"(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) [or under the provisions of section 163-A] is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

8. 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 section 147(5) and 149(1) of the Motor Vehicles Act, the appellant 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."

9. 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.

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11. 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."

10. The aforesaid judgment clinches the issue in favour of the appellant. In fact, this view has been reiterated by the Supreme Court in the case of New India Assurance Co. Ltd. v. Rula, 2000 ACJ 630 in which it was laid down as under:

"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 dishonored, would not affect the rights of the third party which had accrued on the issuance of the policy on the date on which the accident took place. If on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the insurance company and the owner of the vehicle would have to be indemnified in respect of the claim

of that party. Subsequent cancellation of insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party."

11. The respondent No. 3 relied upon the judgment of this Court in the case of Oriental Insurance Co. Ltd. v. Mohd. Waseem, 2008 ACJ 2242, which will be of no avail to the Insurance Company. I may note that the reliance was placed on the following view of the Supreme Court in the case of Daddappa v. Branch Manager, National Insurance Co. Ltd., 2008 ACJ 581 (SC):

"We are not oblivious of the distinction between the statutory liability of the insurance company Visa-a-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"

12. It is very clearly stated by the Supreme Court that the liability of Insurance Company gets cancelled only when all concerned have been intimated about the cancellation of the insurance policy. That did not occur in the instant case. Therefore, I hold that the Insurance Company is liable to pay the compensation to the appellant, though it may recover the same from the respondent Nos. 1 & 2. As far as second issue is concerned, I agree with the learned counsel for the appellant that the interest of 5.5% awarded to the appellant is of lower side. As per the judicial trend, which is contained in the various judgments including the judgment of the Apex Court in Sarla Verma v. Delhi Transport Corporation, 2009 ACJ 1298, in the instant case, award of interest @ 7.5% would be reasonable.

13. This appeal is accordingly allowed in the aforesaid terms with cost quantified @ Rs. 25,000/-.