IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

O R D E R

1) S.B. CIVIL MISC.APPEAL NO.398/2001.

National Insurance Company

Vs.

Sua Lal Sharma and others

2) S.B. CIVIL MISC.APPEAL NO.2024/2000.

Sua Lal Sharma

Vs.

Dhan Singh and others

Date of Order:- 30 May 2008.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Praveen Jain for the appellant.

Shri Anurag Sharma for respondent No.1.

Shri Subhash Jain for respondent No.3.

(in SBCMA NO.398/2001).

Shri Anurag Sharma for the appellant.

Shri Praveen Jain for respondent No.3.

(in SBCMA NO.2024/2000).

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BY THE COURT:-

Reportable

Since both these appeals arise out of the same award passed by the Motor Accident Claims Tribunal, Tonk, they were heard together and are being disposed of by this common order.

2) First of the above appeals has been preferred by the National Insurance Company Ltd. against the award dated 26/9/2000 passed by MACT Tonk whereby it awarded a sum of Rs.1,42,000/- to the claimant-respondents as compensation for the loss of Truck No.RND 6065 and the cement loaded therein, which were burnt as a result of the accident involving Tanker No.HNU 885 insured with the appellant insurance company. Another appeal has been filed by the claimant for enhancement of the amount of compensation.

3) Shri Ganesh Joshi, learned counsel for the appellant-National Insurance Company has argued that the liability of compensation could not be fastened on the appellant because the vehicle in question was insured with them on 5/10/1992 but the cheque of premimum amount was dishonoured on 9/10/1992 with the intimation that same was given to the non-claimant, owner of the vehicle. However, without disclosing the fact that this vehicle was met with an accident during night intervening between 8/9.10.1982 and he deposited the amount on 9/10/1982 and got the new cover note issued for the period from 9/10/1982 to 8/9/1983 at 4.30 p.m. on that day. It was argued that all these facts were brought in the affidavit of their witness Sukumar Raja and the copy of the policy was placed on record. Evidence clearly proved that

incident took place at 2.00 a.m. in the morning of 9/10/1982 whereas cover note/policy was issued at 4.35 p.m. on 9/10/1982. Learned counsel therefore argued that the vehicle at the time of accident cannot taken to have been insured with the appellant so as to held them liable to make payment of compensation. It was argued that Tribunal has wrongly relied on the judgment of Supreme Court in **2000 WLC (SC) 275**. Learned counsel relied on recent judgments of Supreme Court in **Deddappa and others Vs. Branch Manager, National Insurance Co.Ltd. : (2008) 2 SCC 595, Oriental Insurance Co.Ltd. Vs. Nanjappan and others : Civil Appeal No.1012 of 2004 (arising out of SLP (C) No.6631 of 2003) decided on 13/2/2004 and National Insurance Co.Ltd. Vs. Seema Malhotra and others : AIR 2001 SC 1197.**

4) On the other hand, Shri Anurag Sharma, learned counsel appearing for the claimant-respondent No.1 and Shri Subhash Jain, learned counsel appearing for non-claimant respondent No.3 opposed the appeal and argued that insurance company cannot escape from its responsibility because it had the contract of insurance when the accident took place. Even if the cheque was dishonoured, information of its being dishonoured was not given to the owner of the vehicle. It was argued that no such proof was produced before the Tribunal that the owner had actually been informed about dishonour of the cheque

given by him. Learned counsel cited judgments of Supreme Court in **Oriental Insurance Company Ltd. Vs. Inderjit Kaur and others : (1998) 1 SCC 371, Shiva Devi Jadon and another Vs. Shiv Kumar Sharma and others : 2007 ACJ 774, Oriental Insurance Co.Ltd. Vs. Mahesh Prasad Rawat and others : 2007 ACJ 1142 and United India Insurance Co.Ltd. Vs. Devaiah and others : 2007 ACJ 1659.**

5) Shri Anurag Sharma, learned counsel for appellant-claimant in SBCMA No.2024/2000 argued that the Tribunal has failed to appreciate the evidence in true perspective while awarding merely a sum of Rs.1,42,000/- as compensation. Tribunal further failed to appreciate that claimant purchased the said truck from one Shri Ummed Singh for sale consideration of Rs.2,65,000/- and it was totally damaged due to fire. Tribunal could not have therefore arrived at the value of Rs.1,25,000/- after applying the principle of depreciation. Similarly, Tribunal further erred in law in awarding only a sum of Rs.60,000/- for the loss of business suffered by the claimant. Amount of compensation is therefore deserve to be suitable enhanced.

6) I have given my thoughtful consideration to the arguments aforesaid and perused the impugned judgment as also the respective cases citing precedence.

7) It is evident from the facts of the case that the first cover note was issued by the insurance company on 5/10/1992 according to which, the vehicle was insured for the period from 5/10/1992 to 4/10/1993. Though the accident took place in the night intervening between 8/10/1992 and 9/10/1992 at 2.00 a.m. on 9/10/1992 but the intimation about dishonour of the cheque dated 3/10/1992, as per the evidence on record was sent by the insurance company to the owner of the vehicle on 9/10/1992 itself. It is also evident from the record that office of the insurance company had again issued a cover note of the same vehicle at 4.35 p.m. on 9/10/1992 by accepting amount of premium in cash. Though what is contended by the insurance company is that intimation of the dishonour of the cheque was sent to the owner of the vehicle on 9/10/1992 itself but neither the point of time when such intimation was sent has been indicated nor proved nor it has been shown that whether such information was actually delivered to the owner on that day but from the facts of the case, two inferences can be safely drawn, **one :** when the incident took place at 2.00 a.m. on 9/10/1992 itself, the intimation of the dishonour of the cheque was certainly not sent by the insurance company to the owner before the accident took place and **two :** that when owner got another cover note issued for insurance of the same vehicle by depositing the

amount of premium in cash at 4.35 p.m. on 9/10/1992, then only he actually came to know of the fact that his earlier cheque has been dishonoured.

8) Tribunal while fastening the liability on the insurance company relied on judgment of Supreme Court in Oriental Insurance Company Ltd. Vs. Inderjit Kaur and others wherein, Supreme Court held that insurance company by reason of the provisions of Sections 147 (5) and 149(1) of the Motor Vehicles Act, 1988, became liable to indemnify third parties in respect of the liability covered by the policy and to satisfy awards of compensation in respect thereof notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured. It was further held that in policy of insurance that the insurance company made 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, for the insurance company itself was responsible for its predicament having 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. Public interest that a policy of insurance serves must, clearly, prevail over the interest of

the insurance company.

9) In Oriental Insurance Co.Ltd. Vs. Mahesh Prasad Rawat and others, supra, Supreme Court rejected the appeal of the insurance company disputing its liability on the ground that neither receipt of sending notice of cancellation of the contract by the insurer sent to the owner due to dishnour of cheques was proved nor any document to show that cancellation thereof was notified to the insured was proved. It was held that it was for the insurer and insured to settle the inter se dispute between themselves.

10) Same view was reiterated in United India Insurance Co.Ltd. Vs. Devaiah and others supra.

11) Coming now to the judgment cited by the counsel for the appellant, in Deddappa and others supra, facts were entirely different. That was a case in which cheque dated 15/10/1997 was dishonoured on 21/10/1997 and the insurance company cancelled the contract of insurance on 6/11/1997 and cancellation thereof was apprised to the insured so also copy of the same was also sent to the RTO along with memo issued by the bank with regard to dishonour of the cheque whereas, accident took place on 6/2/1998. Similarly, judgment of Supreme Court in Oriental Insurance Co.Ltd. Vs. Nanjappan and others supra also cannot come to the rescue of the appellant because that merely provides the manner and mode in which

insurance company can recover the amount of compensation from the insured, owner of the vehicle primarily holding the insurance company liable to make good the amount of compensation. Judgment of Supreme Court in National Insurance Co.Ltd. Vs. Seema Malhotra and others is also distinguishable on facts because in that case, cheque issued by the insured for payment of first premium was dishonoured by the drawee bank and the claim for compensation was raised by the insured himself, no third party being involved. In those facts, it was held by the Supreme Court that insurer was not liable to pay claim raised by the insured.

12) In view of settled proposition of law aforesaid and on the facts of the case which are proved by evidence in the present case, I am of the considered view that the Tribunal did not commit any error in holding the appellant insurance company and non-claimant owner liable to make compensation to the claimant-respondents jointly and severally.

13) As regards SBCMA No.2024/2000 filed by the appellant-claimant for enhancement of compensation, on perusal of the evidence adduced by the claimant including the statements of Surveyor-Mukesh Kumar, NAW1-Sualal and documents Ex.10 to Exh.15, I am not pursuaded to uphold the arguments of the learned counsel appearing for the appellant-claimant that the compensation deserves to be enhanced. In my view,

amount of compensation awarded by the Tribunal for the loss and damage to the truck and loss of business is just and reasonable.

14) The appeal of the insurance company however deserves to be allowed in part.

15) The appeal being S.B. Civil Misc.Appeal No.398/2001 (Branch Manager, National Insurance Co. Vs. Sua Lal Sharma & Ors.) is therefore partly allowed to the limited extent that appellant-Insurance Company shall be entitled to recover the amount of compensation from the insured-owner of the vehicle as per the mode and manner laid down by the Supreme Court in Oriental Insurance Co.Ltd. Vs. Nanjappan and others, supra, in the terms as indicated therein.

16) Whereas, S.B. Civil Misc.Appeal No.2024/2000 (Sua Lal Sharma Vs. Dhan Singh and ors.) is dismissed.

There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

Anil