S.K.MISHRA, J.

MACA. NO.823 OF 2008. (Decided on 31.03. 2010.)

D.M., ORIENTAL INSURANCE COMPANY LTD. …… Appellant

-V-

TUSHAR RANJAN DASH & ORS. …… Respondents

MOTOR VEHICLES ACT, 1988 (ACT NO.59 OF1988) – SEC.146, 147, 149.

For Appellant – M/s. S.K.Swain , U.S.Sahoo-2, & B.Rout.
For Respondents – M/s. Pradip Kumar Mishra, P.Mishra
& S.K.Rout.

S.K. MISHRA, J. The simple question that arises for determination in this appeal preferred by the Insurance Company is whether, in spite of cancellation of the Insurance Policy prior to the date of accident because of dishonour of the cheque deposited towards premium by the insured, the legal heirs of a third party who died in an accident of that vehicle shall have the right of claiming compensation from the Insurance Company.

2. It is undisputed that on 16.07.2004 at about 11 A.M., while the deceased was standing in front of his house at village Bandha, the offending Dumper bearing Regn. No. MP-20G/4694 belonging to the opposite party no.1 came in a rash and negligent manner and dashed against the deceased, as a result of which, he died at the spot.

The claimant pleaded that the deceased was working as a Carpenter and was earning a sum of Rs.3,500/- per month, but the learned Ist Motor Accident Claims Tribunal, Keonjhar (hereinafter referred to as the "Tribunal" for brevity) did not accept such plea and held that the deceased was earning a sum ofRs.1,300/- per month. In view of the fact that he was 32 years old at the time of death, learned Tribunal adopted 17 as multiplier and fixed the compensation at Rs.1,76,800/-. The learned Tribunal further added a sum of Rs.7,000/- towards various other losses and awarded a total sum of Rs.1,83,800/- with interest @ 9% per annum from the date of accident. The learned Tribunal directed the Insurance company to pay the compensation to the claimants.

3. The owner of the vehicle was set ex parte. Opposite party no.2, i.e. the present appellant-Insurance Company resisted the claim of the petitioner, inter alia, alleging that the Insurance Policy No.1077 of 2005 relating to the offending vehicle was issued in favour of the opposite party no.1, but the cheque, which was deposited by the insured towards premium was dishonoured, on 13.07.2004, due to insufficient funds. Hence, the opposite party cancelled the above policy. Therefore, the opposite party claimed that the Insurance Company is not liable to compensate the claimants for the death of the deceased.

4. In course of hearing of the appeal, learned counsel for the Insurance Company by drawing attention of the Court to the provisions of Section 2 of the Indian Contracts Act, 1972 (Act 9 of 1972), (hereinafter referred to as "Contract Act" for brevity) and Section 64-VB of the Insurance Act, 1938 (Act 4 of 1938) (hereinafter referred to as "Insurance Act" for brevity), contended that when the premium has not been paid, there is no contract of Insurance between the Insured and the Insurer and therefore, the legal heirs of the deceased cannot claim any compensation from the Insurance Company.

Learned counsel for the opposite parties 2 to 9, on the other hand, submitted that even if there is no subsisting contract of Insurance between the appellant and the owner of the vehicle, still by virtue of operation of Sections 147 and 149 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act" for brevity), the Insurance Company is liable to indemnify the claimants for the loss they have suffered.

5. Section 2 of the Contract Act provides for various definitions. Clause (d) of the said Section provides as follows:-

> "(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."
>
> Similarly, Clause (e), (f) and (g) reads as under
>
> "(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;
>
> (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises;
>
> (g) An agreement not enforceable by law is said to be void;"

6. A contract of Insurance like any other form of contract is concluded by offer of acceptance. So in ordinary course, any liability under the Contract of Insurance would arise only after payment of premium, if such payment has been made in a continuous process to the Insurance Policy taking effect. Section 64 VB of the Insurance Act reads as under:

> "**64-VB. No risk to be assumed unless premium is received in advance**- (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amounts may be prescribed, is made in advance in the prescribed manner.
>
> (2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.
>
> Explanation- Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.
>
> (3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories insurance policies.

(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer.

Rel ying on such provision, the Insurer claimed that the cheque covering the premium was dishonoured and in absence of payment of the premium, the terms of the policy became ineffective. It is further contended that as there is no policy which obliged it to pay the compensation, the Insurance Company is not liable to indemnify the claimants. Learned counsel for the appellant drew attention of the Court to the recital of Ext. A, i.e. the Certificate-cum-Policy Schedule, which contains a clause which reads "Warranted that in case of dishonour of premium cheque(s), the said document stands automatically cancelled ab initio (from inception)".

Though the argument advanced by the learned counsel for the appellant appears very attractive, on close scrutiny it is not acceptable.

7. These are the general rules for guiding a principle of insurance, but in order to understand the effect of a contract of insurance especially with its ramifications from the third parties' point of view, the provision under the Act especially Chapter II has to be looked into. Chapter XI of the Act provides for the Insurance of the Motor Vehicle against Third party risk. A duty is cast under section 146. inasmuch as, it provides that no person shall use or cause or allow any other person to use a motor vehicle in a public place, unless there is in force relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of the Chapter. Section 147 sets out the requirements of the policy and the limits of liability. Sub-Section (5) to Section 147 provides that 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 the insurers to satisfy judgments and awards against persons insured in respect of third party risks. Sub-Section (1) of Section 149 reads as follows:

"**149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks-** (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) or 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 cancel or may have avoided 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". *(Emphasis supplied)*

8. Notwithstanding the bar created under Section 64 VB of the Insurance Act or the provisions relating to a valid contract in the Contract Act, the Contract of insurance in respect of the motor vehicles has to be construed in the light of Section 146(1), 147(5) and 149 (1) of the Act. The manifest object of Section 146 (1) contends a prohibition on use of the motor vehicle without an Insurance Policy having been taken in accordance with Chapter **XI** of the Act is to ensure that the third party, who suffers injuries due to the use of the motor vehicle, may be able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the injuries. Thus, a contract of insurance contemplates a third party who is not a signatory or a party to the contract of insurance, but is, nevertheless, protected by such contract. Therefore, the third party is not concerned and does not come into the picture at all in the matter of payment of premium. Whether the premium has been paid or not is not the concern of the third party, who is concerned with the fact that there was a policy issued in respect of the vehicle involved in the accident and it is on the basis of this policy that the claim can be maintained by the third party against the insurer. (***New India Assurance Co. Ltd. V. Rula and others, (2000) 3 SCC 195 relied on).***

9. Similar view had also been taken by the Hon'ble Supreme Court in **Oriental Insurance Co. Ltd. V. Inderjit Kaur and others,** (1998) 1 SCC 371. Despite the bar created by Section 64-VB of the Insurance Act, the appellant 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 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 to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon has been dishonoured.

10. In the case of **Oriental Insurance Co. Ltd. V. Inderjit Kaur** (supra), the insurance policy was issued by the appellant on 30.11.1989. The premium was paid by a cheque. The cheque was dishonoured. A letter stating that it has been dishonoured was sent by the appellant to the insured on 23.01.1990. It was intimated that since the premium of the policy has not been received, the appellant's risk was not covered. The premium was paid on 02.05.1999 in the shape of cash. In the meantime, on 19.4.1990, the accident took place out of which the claim application arose.

11. The facts of the aforesaid case are similar to the facts of this case. In this case also, before the accident, there has been a communication to the insurer by the appellant that the Insurance Policy has been cancelled, as a result of dishonor of the cheque, but such fact by itself will not absolve the insurance company of the liability to indemnify the legal heirs of the deceased in view of the aforesaid discussions. Similar view has also been taken by the Hon'ble High Court of Chhatisgarh in **National Insurance Company Ltd. V. Rajendra Mourya and others,** AIR 2007 Chhatisgarh 138.

12. Though this Court is of the opinion that the claimants i.e. Legal heirs of the deceased are entitled to be indemnified by the Insurance Company, it is also of the considered opinion that the Insurance Company is entitled to recover the compensation amount from the insured. Though by virtue of section 146, 147 and 149 of the Act, the insurer is liable to the third parties such liability cannot be saddled on it as far as the

owner of the vehicle is concerned. For example, if in such a case of cancellation of the insurance policy, the vehicle itself is damaged, the owner cannot claim compensation for the damage suffered by himself. Section 149 of the Act is a benevolent provision. It has been enacted only with an intention to protect the innocent pedestrians, who uses the public road against the risk of rash and negligent use of the Motor vehicles. Such benevolent provision cannot be stressed to
cover the liability of the owner. Hence, this court is of the considered opinion that the Insurance company is entitled to recover the amount of compensation it pays to the claimants from the owner of the offending vehicle.

13. Further is it seen that the learned Tribunal has ordered that the claimants are entitled to receive interest @ 9% per annum. This Court is of the opinion that the interest should be payable @ 6% per annum on the entire compensation amount from the date of accident.

12. In the result, the Appeal is allowed in part. While affirming the amount of compensation and direction to the appellant to pay the compensation amount of Rs.1,83,800/- along with interest @ 6% per annum from the date of accident, this Court further orders that the Insurance Company may, if so advised, recover the amount paid to the claimants by filing appropriate application before the learned Tribunal.

Appeal allowed in part.