

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA No.85/2008

Date of order:-11/08/2016

Oriental Insurance Company Limited Vs. Chander Kant Sharma and anr.

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge

Appearing counsel:

For the Appellant (s) : Mr.D.S.Chouhan, Advocate.
For the respondent(s) : None.

- (a) Whether approved for reporting in Digest/Law Journal-Net : Yes/No
- (b) Whether approved for reporting in Press/Media : Yes/No
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1. This appeal is of the year 2008.
2. The issue involved in the present appeal is whether the Insurance Company is liable to indemnify the insured when there was no contract of insurance, as a cheque given towards premium has been dishonoured and intimation thereafter has been given to the insured.
3. The accident in this case happened on 8th August, 2002 and the vehicle which is involved is a Bus bearing registration No.DL-IP 8322. The owner of the vehicle is Manzoor Hussain and in respect of the very same accident another appeal was filed and by order dated 15.07.2016, the appeal of the Insurance Company was allowed holding that there was no valid policy to cover the claim.

4. The present appeal is also a claim based on the same accident which happened on 08.08.2002 in respect of the same vehicle owned by the 2nd respondent herein. Accordingly the question of law is answered in favour of the appellant Insurance Company. Appeal is allowed on the same terms as in CIMA No.58/2005 which reads as follows:

“In this case, the Insurance Policy has been cancelled consequent to dishonouring of the cheque on account of insufficiency of funds. Intimation has been given to the owner indicating that the policy has been cancelled. This is recorded as a matter of fact.

The question of Insurance Company becoming liable in such circumstances would not arise in light of the decision of the Supreme Court in case titled “United India Insurance Company Limited Vs. Laxmamma and others” decided on 17.04.2013, reported in 2012 ACJ 1307 which in paras 18 and 19 reads as follows:

18. “We find it hard to accept the submission of learned counsel for the insurer that the three-Judge Bench decision in Inderjit Kaur, 1998 ACJ 123 (SC), has been diluted by the subsequent decisions in Seema Malhotra, 2001 ACJ 638 (SC) and Daddappa, 2008 ACJ 581 (SC). Seema Malhotra and Daddappa turned on the facts obtaining therein. In the case of Seema Malhotra, the claim was by the legal heirs of the insured for the damage to the insured vehicle. In this peculiar fact situation, the court held that when the cheque for premium returned dishonoured, the insurer was not obligated to perform its part of the promise. Insofar as Daddappa is concerned, that was a case where the accident of the vehicle occurred after the insurance policy had already been cancelled by the insurance company.

19. In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of

authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of sections 147 (5) and 149 (1) of the M.V.Act unless the policy of insurance is cancelled by the authorized 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 authorized insurer to cover a vehicle on receipt of the cheque paid for premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and send 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.

The said decision squarely covers the issue on hand. The appellant Insurance Company has followed the procedure prescribed. There is no valid insurance policy to cover the claim.

Accordingly, the question of law is answered in favour of the appellant – Insurance Company. The liability is, therefore, stands shifted to the owner of the vehicle to satisfy the award. No order as to costs.”

5. The appeal stands allowed and the Insurance Company is exonerated from liability. The liability shifts on the owner and driver of the vehicle to satisfy the award.

(Ramalingam Sudhakar)
Judge

Jammu,
11.08.2016
Varun