

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

**FAO No. 197 of 2018 along
with FAO No. 366 of 2018.**

Reserved on: 20th September, 2018.

Decided on : 28th September, 2018.

1. FAO No. 197 of 2018.

Keshav Kapil

.....Appellant.

Versus

Santosh Kumar & Others

....Respondents.

1. FAO No.366 of 2018.

Mohinder Singh

.....Appellant.

Versus

Santosh Kumar & Others

....Respondents.

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?¹ Yes.

For the Appellant(s):

Mr. Ramakant Sharma, Advocate
for appellants in FAO No.197 of
2018 and Mr. Sanjay] aswal,
Advocate for the appellant in FAO
No. 366 of 2018.

¹ Whether reporters of the local papers may be allowed to see the judgment?

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For Respondent No. 1: Mr. V.S. Thakur, Vice counsel in both appeals.

For Respondent No.2: Mr. Ashwani K. Sharma, Sr. Advocate with Mr. Subhash Advocate in Cr. Appeal No. 197 of 2018.

Mr. Ramakant Sharma, Advocate, for respondent No.2 in Cr. Appeal No. 366 of 2018.

For Respondent No.3: Mr. Sanjay Jaswal, Advocate in Cr. Appeal No. 197 of 2018.

Mr. Ashwani K. Sharma, Sr. Advocate with Mr. Subhash Advocate in Cr. Appeal No. 366 of 2018.

Sureshwar Thakur, Judge.

The learned Motor Accidents Claims Tribunal-II, Hamirpur, H.P., had, vis-a-vis the injured-claimant Santosh Kumar, hence, computed compensation, borne in a sum of Rs.2,82,391/-, along with interest, at, the rate of 7.5% per annum, from, the date of institution of petition, till its final realization. The indemnificatory liability thereof, was, burdened jointly and severally, upon, the owner and driver, of, the offending vehicle. The owner, and, the driver of the offending vehicle, are,

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aggrieved by the award pronounced by the learned Tribunal in MAC Petition No. 17/13 RBT No.10/13, 55/14, hence, they respectively institute, the aforesaid appeals, before this Court.

2. The learned counsel(s) appearing, for the appellants, whereonwhom, the apt indemnificatory liability stands fastened, contend with much vigour, (i) that the fastening of the apt indemnificatory liability being stained with a gross vice, of, fallibility, and, further rest their submission(s), upon, (ii) with the Hon'ble Apex Court, in, a case titled as ***Deddappa and Ors. v. The Branch Manager, National Insurance Co. Ltd.***, reported in ***2007 AIR SCW 7948***, the relevant paragraph No. 26 whereof, stands extracted hereinafter:-

“26. We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-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

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under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been canceled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.”

(iii) expostulating therein, a, clear principle of law, that, even upon cancellation, of, the contract of insurance, arising from dishonour of premium cheque, (iv) thereupon, also the insurer being amenable to stand fastened with the apt indemnificatory liability, upon, cogent evidence being adduced, vis-a-vis, the insured being not intimated, vis-a-vis, dishonour, of, premium cheque. On anvil of the afore citation, he contends, that, in consonance therewith, (v) the insurer is enjoined to adduce evidence qua preceding the apposite rescission, or cancellation, of, the contract of insurance, arising, from want, of, the dishonour, of, premium cheque, its making an apt intimation, vis-a-vis, the insured. He

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contends that evidence, in consonance, with, the aforetrite expostulation of law, embodied in the judgment supra, rendered by the Hon'ble Apex Court, is, grossly amiss hereat. Their submission(s) are well anchored, (vi) as, a reading of the testification, occurring in the cross-examination of RW-3, underscores qua his acquiescing to a suggestion, vis-a-vis, the record appertaining, to the AD covers, as, appended with the registered letter, whereunderthrough, the apt information was purportedly purveyed to the insured, rather being destroyed, and, his also acquiescing, vis-a-vis, a suggestion qua the apt register containing the aforesaid information, being, also destroyed. Even if, the afore occurrence, of, afore destruction(s) hence disabled the insurer, to adduce evidence, vis-a-vis, the apt intimation being rather well within time hence purveyed to the insured. (viii) Yet, this Court would not be constrained to accept the afore exculpatory espousal, reared by the insured, given the

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authorised officer, of, the insurer while rendering his testification, omitting, to, produce before the learned Tribunal, the apt list of destruction, especially when hence his afore exculpatory testification, vis-a-vis, its afore disability, to hence adduce evidence qua the apt intimation, rather would acquire both immense succor, and, fortification. Want thereof, rather renders, it, to hence founder.

3. Be that as it may, the apt indemnificatory liability of the insurer qua the offending vehicle, rather would remain intact, and, would not be axed, merely upon apt cogent evidence remaining unadduced by it, vis-a-vis, purveying, of, intimation, to the insured, vis-a-vis, the dishonour, of, premium cheque, (i) upon evidence surging forth, vis-a-vis, the memo, of, dishonour, as issued by the bank, whereat the insured maintained his accounts, rather standing falsified by fortified and formidable evidence. Ex.RW2/A is proven by RW-2. RW-2

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is the official of the bank concerned, whereat the insured maintain(s) his account(s), for, ensuring the realization(s) therefrom the amount borne in cheque Ex.RW2/A. Ex.RW2/B was prepared, on 19.07.2011, and, in case, it, purportedly stands ingrained with false recitals, thereupon, the apposite statement of accounts, as, embodied, in mark R-1, (ii) hence was enjoined to make a candid display, that, on 19.07.2011, funds sufficient for honouring Ex.RW2/A, rather occurred therein. However, a perusal of Ex. R-1, makes a disclosure that on 19.07.2011, funds rather not being available therein, for, ensuring, hence, realization therefrom, of, the amount, embodied in Ex. RW2/A, (iii) thereupon, for the afore assigned reasons, it is to be rather concluded, that dehors, any apt intimation being purveyed by the insurer to the insured, vis-a-vis, the dishonouring, of, premium cheque, yet want thereof, rather not coaxing any conclusion from this Court, that the indemnificatory

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liability, vis-a-vis, the compensation amount hence being fastenable upon the insurer, (iv) importantly when apt wants ,of, liquidation, by the insurer, of, consideration, vis-a-vis, the contract, of, insurance, qua, the insured, it begets, an apt nullifcatory effect.

4. Be that as it may, even otherwise, a perusal of the insurance cover, borne in Ex.RW3/A, unfolds qua its carrying therein, the hereinafter extracted warranty:

“WARRANTED THAT IN CASE OF DISHONOUR
OF THE PREMUM CHEQUE. THIS DOCUMENT
STANDS AUTOMATICALLY CANCELLED
'ABINITO'.”

A closest incisive reading, and, perusal thereof hence discloses that *ipso facto*, upon, the dishonour of the premium cheque, rather entailing, the ill consequence qua per se, thereupon, the contract of insurance, automatically suffering cancellation or rescission, (a) given the contracting insured, breaching the enjoined

term, of, his liquidating, the, premium, vis-a-vis, the insurer, (b) whereas, for a contract of insurance, for its, rather being inferable, to, hold subsistence, and, longevity, is, enjoined to be proven, for, liquidated consideration, (c) contrarily any apt contract, upon, being provenly, to be, without consideration rather hence *ipso facto* is construable, to, be, void, nor it comes into being, nor it holds any subsistence or longevity. The afore extracted warranty, as, occurring in Ex.RW3/A, would suffer diminution or dilution, vis-a-vis, its vigour, upon, a reading of the verdicts, rendered by Hon'ble Apex Court, reported in 2007 AIR SCW 7948, and, the verdicts of this Court reported in HLJ 20149H0) 1140, United India Insurance Company vs. Smt. Sanjna Kumari, Latest HLJ 2014 (HP) Supplementary 468 Raj Kumar Vs. The New India Assurance Company and 2016 ACJ 2401 National Insurance Company Ltd. vs. Bimla Ben and others, (d) all manifestly propounding therein, the, trite expostulation

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of law that unless proven intimation is given, vis-a-vis, the dishonour of premium cheque, thereupon, the apt indemnificatory liability, (e) rather also being fastenable upon the insurer, rather carrying narrations qua the Hon'ble Apex Court also therein rather dealing with the impact, of, the afore extacted warranty, as, visibly occurs, in, the extant cover note, issued by the insurer, vis-a-vis, the insured. However, an incisive reading of the afore verdicts, rendered by the Hon'ble Apex Court, omits to make any display, qua, therein the Hon'ble Apex Court, hence, dealing with the impact, of, any alike hereat afore warranty. The effect thereof, (f) is, that the afore verdicts rendered by the Hon'ble Apex Court not either diluting or undermining, the effect of the afore warranty, (g) and, further corollary thereof, is that when, upon, dishonour, of, premium cheque, it stands mandated therein, qua, the apt contract of insurance, appertaining, vis-a-vis, the offending vehicle, ipso facto

begetting, the ill consequence of cancellation, (h) and, therefrom it is to be also concluded that hence in the extant contract, there was no obligation fastened, upon, the insurer to make, an, apt intimation, vis-a-vis, the dishonour of the premium cheque, qua the insured. Even otherwise , in a judgment rendered by the Hon'ble Apex Court, in a case, titled as ***Vikram Greentech (I) Ltd. vs. New India Assurance Co. Ltd.***, reported in ***(2009)5 SCC 599***, the relevant paragraph whereof stand extracted hereinafter:-

“16. An insurance contract, is a species of commercial transactions and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is requirement of uberrima fides i.e. good faith on the part of the insured. Except that, in other respects,

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there is no difference between a contract
of insurance and any other contract.”

(i) it stands propounded, that, the contract of insurance, being amenable, to, be strictly construed like any other contract, and, deference being meted to the terms, and, conditions, as, embodied therein. The afore warranty, embodied in Ex. RW3/A, hence, is, enjoined to be strictly construed, thereupon, the mere factum, of, dishonour of Ex. RW2/A, by the Kangra Cooperative Bank, immediately ipso facto brought, the, ill consequence, qua, the apt contract rather standing cancelled or rescinded, dehors any intimation, vis-a-vis, the dishonour of the premium cheque hence being purveyed by the insurer, to, the Insured.

5. For the foregoing reasons, there is no merit in the instant appeals and they are dismissed accordingly. In sequel, the impugned award is maintained and affirmed.

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All pending applications also stand disposed of. Records be sent back forthwith.

**28th September, 2018.
(jai)**

**(Sureshwar Thakur)
Judge.**