NATIONAL INSURANCE CO. LTD. A

v.

ABHAYSING PRATAPSING WAGHELA AND ORS.

(Civil Appeal No. 5305 of 2008)

AUGUST 29, 2008 B

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Motor Vehicles Act, 1988 – ss.145(1)(b) and (d), 146 and 147 – Accident – Third party claim – Cheque issued towards premium of insured vehicle, dishonoured – But 'Cover Note' issued therefor – After the accident, premium amount paid in cash – Liability of insurer to reimburse third party claim – Held: Insurer is liable to reimburse the third party claim having issued 'Cover Note' – 'Cover Note' would come within the purview of definition of 'Certificate of Insurance' and 'Insurance Policy' – A contract of insurance for the purpose of covering third party risk could not be purely contractual – It is to be contra-distinguished from the contract covering liability of the owner of the vehicle. C D

Respondent No.1 sustained severe injuries in an accident caused by the insured vehicle (a truck). Respondent No.1 made a third party claim. A cheque was issued with the Insurance Company five days prior to the date of accident towards premium of the offending vehicle. On receipt of the same a 'Cover Note Number' was given by the Insurance Company. The cheque was dishonoured. However, three days after the date of the accident, premium amount was paid in cash. Claims Tribunal as well as High Court held that the Insurance Company was obliged to reimburse the third party claim in view of the fact that it had issued 'Cover Note'. Hence the present appeal. E F G

Dismissing the appeal, the Court

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A HELD: 1. Chapter XI of Motor Vehicles Act, 1988 provides for insurance of motor vehicles against third party risks. The first respondent is a third party in relation to the contract of insurance which had been entered into by and between the appellant and the owner of the vehicle
B in question. A document was produced before the Tribunal. Even according to the appellant, although it was only a Motor Input Advice cum Receipt, it contained the Cover Note Number. It is, therefore, to be supposed that a Cover Note had, in fact, been issued. If a Cover Note
C had been issued which in terms of clause (b) of sub-Section 1 of Section 145 of the Act would come within the purview of definition of Certificate of Insurance; it also would come within the purview of the definition of an Insurance Policy. If a Cover Note is issued, it remains
D valid till it is cancelled. Indisputably, the insurance policy was cancelled only after the accident took place. A finding of fact, therefore, has been arrived at that prior to the deposit of the premium of insurance in cash by the owner of the vehicle, the cover note was not cancelled. [Paras
E 13 and16] [1055,B; 1056,H; 1057,A-C]

2. A contract of insurance is, no doubt, to be governed by the terms thereof, but a distinction must be borne in mind between a contract of insurance which has been entered into for the purpose of giving effect to the object
F and purport of the statute and one which provides for reimbursement of the liability of the owner of the vehicle strictly in terms thereof. In that limited sense, a contract of insurance entered into for the purpose of covering a third party risk would not be purely contractual. An
G ordinary contract of insurance does not have a statutory flavour. The Act merely imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act as also the Contract. So far as the liability of the insurance company which comes within
H the purview of Sections 146 and 147 is concerned, the

same subserves a constitutional goal, namely, social justice. A contract of insurance covering the third party risk must, therefore, be viewed differently vis-à-vis a contract of insurance qua contract.[Para 17] [1057,D-G]

National Insurance Co. Ltd. v. Laxmi Narain Dhut **(2007) 3 SCC 700;** *Oriental Insurance Co. Ltd. v. Meena Variyal and Ors.* **(2007) 5 SCC 428;** *Oriental Insurance Co. Ltd.v. Sudhakaran K.V. and Ors.* **2008 (8) SCALE 402;** *Oriental Insurance Co. Ltd. v. Inderjeet Kaur* **(1998) 1 SCC 71 – relied on.**

United India Insurance Company Ltd. v. Rattan Singh and Ors. **AIR 1993 MP 197;** *Deddappa and Ors. v. Branch Manager, National Insurance Co. Ltd.* **(2008) 2 SCC 595 – referred to.**

Case Law Reference

AIR 1993 MP 197	**Referred to**	**Para 10**
(2007) 3 SCC 700	**Relied on**	**Para 18**
(2007) 5 SCC 428	**Relied on**	**Para 18**
2008 (8) SCALE 402	**Relied on**	**Para 18**
(1998) 1 SCC 71	**Relied on**	**Para 18**
(2008) 2 SCC 595	**Referred to**	**Para 18**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5305 of 2008

From the final Judgment and Order dated 6.07.2006 of the High Court of Gujarat, at Ahemdabad in First Appeal No. 2069 of 2006

Pankaj Bala Verma, Kiran Suri and S.J. Amith for the Appellant.

Jatin Zaveri for the Respondents.

The Judgment of the Court was delivered by

A **S.B. SINHA, J.** 1. Leave granted.

2. What would the effect of dishonour of a cheque when subsequently the amount of premium has been accepted in cash by the insurer is the question involved herein.

B 3. First respondent was driving a moped on 27.1.1995. An accident took place on the said date as the said vehicle was hit by a truck bearing registration No.GJ 6T 7000 which was allegedly being driven in a rash and negligent manner. The said truck first dashed against an Ambassador car and then hit C the moped which was being driven by the respondent as a result whereof he suffered severe injuries.

4. For the purpose of getting the said truck insured, a cheque was tendered to the officers of the appellant company on 23.1.1995. As noticed hereinbefore the accident took place D on 27.1.1995. The cheque when presented to the bank for clearance was allegedly dishonoured. On 30.1.1995, however, the amount of premium was paid in cash and received.

5. The Motor Vehicle Accident Claims Tribunal as also the High Court, however, opined that having regard to the fact that E a cover note had been issued by the appellant, it was legally obligated to reimburse the claim of a third party.

6. Ms. Pankaj Bala Verma, learned counsel appearing on behalf of the appellant, would submit that in terms of Section F 64VB of the Insurance Act, a contract of insurance issued would be valid only when the cheque issued towards payment of the premium is honoured. The learned counsel would urge that cheque is an instrument in terms whereof payment is guaranteed and it is accepted as a valid payment only on that premise but G when it is dishonoured, the contract being without consideration need not be performed. It was furthermore contended that the learned Tribunal as also the High Court committed a serious error insofar as they failed to correctly read the Motor Input Advice cum Receipt showing that the insurance was valid from 23.1.1995 to 22.1.1996. It was submitted that no cover note, in H

fact, was issued; and what was issued was merely a money receipt which itself shows that the same was valid subject to the realization of the amount.

7. Strong reliance in this behalf was placed on *Deddappa & Ors. V. Branch Manager, National Insurance Company Ltd.* [(2008) 2 SCC 595].

8. Mr. Jatin Zaveri, learned counsel appearing on behalf of the respondent, on the other hand, contended that a cover note, in fact, was issued on 23.1.1995 in favour of the insurer. The learned counsel submitted that not only the said fact was admitted in the pleadings of the insurance company but also the witness examined on behalf of the appellant took the same stand before the Tribunal as also before the High Court. Our attention in this behalf has also been drawn to the grounds of appeal taken in the Special Leave Petition.

9. The objection taken by the appellant in its written statement reads as under :

> "It is hereby submitted that in this case applicant had not produced any documentary evidence pertaining to policy of involved vehicle except Cover Note, and in legal sense cover note is not authentic document, more over this cover note which was produced by the applicant shows cheque payment and if cheque does not realized then the contract of insurance does not exists and hence replying opponent does not liable to pay compensation and it is established principal that if replying opponent does not received premium that its liability does not exists. And in this regard replying opponent reserves it all right without prejudice this averments."

10. Appellant, therefore, proceeded on the basis that a cover note was, in fact, issued. Yet again, a similar contention has been raised before the Tribunal as would appear from the following excerpts from the award:

"However, as per the contention raised by the Ld. Advocate

A for the applicant, the contract of insurance and policy the alleged vehicle were not in existence as on the date/date of occurrence; that the cheque issued was dishonoured and, therefore, the cover note it had issued becomes ineffective and as such, no policy obliging to pay the B compensation by the insurer exists on the day of occurrence and therefore, the opponent No.3 cannot be held liable to indemnify the third party and/or the Insurer be absolved of its obligations to third party because of non-receiving of the premium. In support thereof, the Ld. C Advocate for the opponent No.3 placed strong reliance on the propositions of law laid down in 2002 (1) AJR 168, 1991 ACJ 650."

Apart from the same, even before us in the Special Leave Petition, the appellant, after quoting a decision of the Madhya D Pradesh High Court in *United India Insurance Company Ltd. V. Rattan Singh & Ors.* [AIR 1993 MP 197], stated the following:

"Similar is the case in hand and is squarely covered by this judgment. It is also a case where it had not issued any policy but was cover note and that too was cancelled when E the cheque was bounced and also prior to the date of accident itself."

11. A bare perusal of the receipt would show that not only the same contains a column relating to "Class Code" but also F a "Cover Note Number". No contention had been raised that the number purported to be noted against the column of "Cover Note Number", in fact, represented the class code. "Class code" has been stated within a box being 217, The purported "Cover Note" said to be bearing no. 279106 is rubber stamped. It is G not within the box meant to state the "Class Code". No material has been placed before the Tribunal to state the "Class Code" number would not only be contained within the box but also would be rubber stamped separately.

12. We might have accepted the explanation of the H appellant before us that the said number 279106 is, in fact,

continuation of the class code No.217, but, as indicated hereinbefore, the stand taken by the appellant not only before the courts below but also before us is otherwise.

13. The Motor Vehicles Act, 1988 (for short, "the Act") was enacted to consolidate and amend the law relating to motor vehicles. Chapter XI of the Act provides for insurance of motor vehicles against third party risks.

Section 145 of the Act is the definition section; clause (b) whereof defines 'certificate of insurance' to mean a certificate issued by an authorized insurer in pursuance of sub-section (3) of Section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.

Clause (d) of Section 145 defines 'policy of insurance' to include 'certificate of insurance'.

Section 146 of the Act mandates that no person, except as a passenger, shall use 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 by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

Section 147 provides for the requirements of policies and limits of liability in the following terms :

"(a) is issued by a person who is an authorised insurer; or

(b) insurer the person or classes of persons specified in the policy to the extent specified in sub- section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the

A use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place."

B A proviso has been appended thereto, which reads as under :

"Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of
C and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in
D respect of the death of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or
E

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

14. An insurance company, however, is entitled to deny its
F liability to indemnify the owner of the vehicle on limited grounds as provided for under sub-section (2) of Section 149 thereof.

15. One of the grounds which are available to the insurance company to deny its statutory liability as envisaged under sub-section (2) of Section 149 of the Act is that the policy is void on
G the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particulars.

16. Indisputably, the first respondent is a third party in
H relation to the contract of insurance which had been entered

into by and between the appellant and the owner of the vehicle in question. We have noticed hereinbefore that a document was produced before the Tribunal. Even according to the appellant, although it was only a Motor Input Advice cum Receipt, it contained the Cover Note No. 279106. We, therefore, have to suppose that a Cover Note had, in fact, been issued. If a Cover Note had been issued which in terms of clause (b) of sub-Section 1 of Section 145 of the Act would come within the purview of definition of certificate of insurance; it also would come within the purview of the definition of a insurance policy. If a Cover Note is issued, it remains valid till it is cancelled. Indisputably, the insurance policy was cancelled only after the accident took place. A finding of fact, therefore, has been arrived at that prior to the deposit of the premium of insurance in cash by the owner of the vehicle, the cover note was not cancelled.

17. It is in the aforementioned situation, we are of the opinion, that the judgment of the High Court cannot be faulted. No doubt, a contract of insurance is to be governed by the terms thereof, but a distinction must be borne in mind between a contract of insurance which has been entered into for the purpose of giving effect to the object and purport of the statute and one which provides for reimbursement of the liability of the owner of the vehicle strictly in terms thereof. In that limited sense, a contract of insurance entered into for the purpose of covering a third party risk would not be purely contractual. We may place on record that an ordinary contract of insurance does not have a statutory flavour. The Act merely imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act as also the Contract. So far as the liability of the insurance company which comes within the purview of Sections 146 and 147 is concerned, the same subserves a constitutional goal, namely, social justice. A contract of insurance covering the third party risk must, therefore, be viewed differently vis-à-vis a contract of insurance qua contract.

18. In *National Insurance Co. Ltd. v. Laxmi Narain Dhut* [(2007) 3 SCC 700], this Court opined:

A "23. As noted above, there is no contractual relation between the third party and the insurer. Because of the statutory intervention in terms of Section 149, the same becomes operative in essence and Section 149 provides complete insulation.

B 24. In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake license has to be considered differently in respect of third party and in
C respect of own damage claims."

The same view was reiterated in *Oriental Insurance Co. Ltd. v. Meena Variyal & Ors.* [(2007) 5 SCC 428] stating:

"14. The object of the insistence on insurance under
D Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923 in respect of the driver, the
E conductor and the one carried in a goods vehicle carrying goods."

This Court in *Oriental Insurance Co. Ltd.v. Sudhakaran K.V. and Ors.* [2008 (8) SCALE 402] held:

F "14. The provisions of the Act and, in particular, Section 147 of the Act were enacted for the purpose of enforcing the principles of social justice. It, however, must be kept confined to a third party risk. A contract of insurance which is not statutory in nature should be construed like any other
G contract."

This Court in Oriental Insurance Co. Ltd. v. Inderjeet Kaur [(1998) 1 SCC 71] held that once a certificate of insurance is issued, the insurance company would not be absolved of its obligations to third parties

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Yet again in *Deddappa & Ors. V. Branch Manager, National Insurance Co. Ltd.* [(2008) 2 SCC 595], having regard to the provisions contained in Section 54(v) of the Insurance Act, 1938, in the fact situation obtaining therein, it was opined: A

> "A contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedents for a valid contract. A contract furthermore must be for consideration." B

19. We, therefore, in the facts and circumstances of the case, are unable to agree with the contention of the learned counsel for the appellant. C

In any event, this is a case where this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India as only a sum of Rs.46,000/- is awarded in favour of respondent No.1. D

20. In our opinion, the impugned judgment does not warrant any interference. The Appeal is dismissed with costs. Counsel's fee assessed at Rs.25,000/-.

K.K.T. Appeal dismissed. E