

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 24TH DAY OF JANUARY 2013

BEFORE

THE HON'BLE MR.JUSTICE S.N.SATYANARAYANA

M.F.A.NO.9430/2008 (MV)

BETWEEN:

United India Insurance Co. Ltd.,
Divisional Office,
No.25, I Floor,
Shankarnarayana Building,
M.G.Road, Bangalore
Now represented by its Manager,
Regional Office, NO.25,
I Floor, Shankarnarayana Building,
M.G.Road, Bangalore.

... Appellant

(By Smt. Harini Shivananda, Advocate)

AND:

1. Sri N. Harish,
S/o Sri Narasaiah,
Major, No.41/1, 3rd Cross,
Type 'A' D.C.A. Complex,
Domlur II Stage,
Bangalore - 560 071.
2. Sri Jaiprakash.R
Father's name not known,
Major, No.8, 2nd Cross,
Manjunathnagar,
Magadi Road, Bangalore.

3. Sri. T.N.Ramachandra
S/o Sri Narasaiah, Major,
No.91, 14th Cross, GEF Post,
Muneshwara Block,
Bangalore – 560 026. ... Respondents

(By Sri.R.Krishna Reddy,
Adv., for R1

R2 & R3 served)

This Appeal is filed under Section 173(1) of MV Act against the judgment and award dated 25.3.2008 passed in MVC.No.3347/2005 on the file of the III Additional Judge, Court of Small Causes, Member, MACT, Metropolitan Area, Bangalore (SCCH.18), awarding a compensation of Rs.1,08,000/- with interest @ 6% p.a from the date of petition till realisation.

This appeal coming on for hearing this day, the Court delivered the following:

JUDGMENT

The second respondent insurance company in MVC.No.3347/2005 on the file of MACT, Bangalore (SCCH-18), has come up in this appeal impugning the judgment and award dated 25.3.2008 so far as saddling the liability to pay compensation on it with a direction for pay and recovery.

2. Brief facts leading to this appeal are as under:

The claimant before Tribunal is said to have met with accident on 11.4.2005 at about 8 pm., involving car bearing

No.KA-02/B.4815. In the claim petition filed by him, the Tribunal on appreciation of oral and documentary evidence available on record proceeded to allow the claim petition awarding compensation in a sum of Rs.1,08,000/- payable with interest at 6% pa., from the date of petition till payment.

3. Being aggrieved by the same, the insurance company has come up in this appeal contending that in respect of offending vehicle first respondent before Tribunal had sought for policy by issuing cheque bearing No.057438 dated 7.5.2004, pursuant to which policy was issued on the very same day covering a period from 7.5.2004 to 6.5.2005. It is stated that said cheque when presented for realisation to the bank came back with an endorsement 'insufficient funds'. Hence, it is stated that policy is cancelled by issuing registered notice dated 7.6.2004 by marking notice to the address stated in the policy that was issued. In that view of matter, the policy was not in force as on the date of accident. Therefore, the liability to pay compensation on appellant-insurance company does not arise.

4. The counter argument on behalf of counsel for respondent is that there is admission of policy being issued by insurance company in written statement filed by it and the only objection that was raised was third respondent was not the owner of vehicle at the relevant point of time of accident. In that view of matter, it is stated that when such a plea is taken by the insurance company, insurance company is aware of the transaction between the parties and the policy issued by it is in force. In that view of matter, in the absence of sufficient proof regarding cancellation of policy, question of exonerating the liability of insurance company does not arise.

5. Heard the counsel for appellant and as well as respondent/claimant. Perused the judgment impugned and the material on record. On going through the same it is seen that the accident is not in dispute. So also injury to claimant, for which claim petition is filed seeking compensation. However, the material available on record discloses that first respondent secured policy for the offending vehicle covering the period from 7.5.2004 to 6.5.2005 by issuing an account payee

cheque bearing No.057438, drawn on State Bank of Mysore, Chord Road Branch, Bangalore, which has come back with an endorsement 'insufficient funds' vide Ex.R1, which is the endorsement issued by the appellant's bank by endorsement dated 11.4.2004. It is further seen that the policy which was issued was subject to realisation of cheque.

6. On going through the documents it is clearly seen that cheque which was issued by first respondent for taking the policy is not in dispute and dishonouring of said cheque is also not in dispute. When once it is established that no premium is received by the insurance company and there is sufficient material to show that there is communication of cancellation of policy much prior to the date of accident, merely because there is denial in the written statement to the effect that third respondent is not the owner of the vehicle would not automatically saddle the liability on insurance company. Even assuming that there is error in written statement that is being made, if the same is not substantiated by the documents and the document speaks otherwise, the document will have to be believed and the contents thereof cannot be ignored. When

prima facie the dishonoured cheque is produced before the Tribunal to demonstrate that the insured has not lived up to his commitment in making payment for the policy that was issued, there is no ground to disbelieve the statement of the insurance company that the policy is cancelled for non receipt of premium amount. In that view of matter, this court is of the opinion that the finding of Tribunal is erroneous in holding that when once cover note is insured on the basis of the cheque issued, the policy would automatically come in to existence, is without basis. In that view of matter, the judgment and award so far as it pertains to saddling liability to pay compensation on insurance company is required to be set aside.

7. In the result, the appeal filed by insurance company is allowed. The judgment and award dated 25.3.2008 passed in MVC.No.3347/2005 on the file of MACT, Bangalore (SCCH-18) is set aside so far as it pertains to saddling liability on insurance company. However, this would not come in the way of claimant proceeding against the owner of offending car in whose name the car stood as on the date of accident to realise

the compensation amount awarded by the Tribunal along with interest.

8. In view of the appeal being allowed, the amount in deposit is ordered to be refunded to appellant.

Sd/-
JUDGE

nd/-