United India Insurance Co. Ltd. Vs Laiq Ram and Others

Court: High Court of Himachal Pradesh

Date of Decision: Sept. 17, 2004

Acts Referred: Insurance Act, 1938 â€" Section 64VB
Motor Vehicles Act, 1988 â€" Section 145, 146(1), 147(1), 147(3), 147(5)

Citation: (2005) 2 ACC 296 : (2006) ACJ 359

Hon'ble Judges: R.L. Khurana, J

Bench: Single Bench

Advocate: N.K. Gupta and Vinod Thakur, for the Appellant; G.D. Verma, H.C. Sharma vice, Sunil Chauhan, Romesh Verma, R.S. Verma, Ajay Mohan Goel, Gulzar Rathore, Sunita Sharma and Arvind Sharma, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Khurana, J.
The abovenoted seventeen appeals arising out of the award dated 31.8.1998 of the learned Motor cidents Claims

Tribunal (II), Shimla (for short "the Tribunal") are being disposed of by this single judgment as the questions involved therein are the same.

2. Appellant in all the appeals is United India Insurance Co. Ltd. (hereinafter referred to as "the insurer"). Respondent Ex-Soldiers Motor

Transport Company is the owner of bus No. UGA 8845 (hereinafter referred to as "the owner").

3. On 19.1.1993 the above said bus was on its way to Nerwa in Tehsil Chopal of District Shimla from Ataal (UP). At about 8.15 p.m. when bus

reached near Bathal, the driver, who was driving the bus in a rash and negligent manner, lost control over the bus as a result it went off the road

and rolled down into river Salvi resulting in the death of all the passengers therein and the driver, save and except PW 1.

4. The claimants-respondents, who are the legal heirs/dependants of the deceased, who died in the accident, approached the learned Tribunal

seeking compensation. The learned Tribunal vide the impugned award allowed all the seventeen claim petitions and awarded various amounts of

compensation in favour of each set of the claimants-respondents. Learned Tribunal came to the conclusion that accident was as a result of rash and

negligent driving on the part of the driver of the offending bus. The appellant insurer was held liable for payment of the amount of compensation to

each set of the claimants-respondents.

5. Aggrieved by the impugned award the appellant insurer is before this Court by way of the present appeals.

6. The only question involved in the present appeals is whether the appellant insurer has been rightly held liable for payment of the amount of

compensation to each set of the claimants-respondents. The contention raised on behalf of the appellant insurer is that since the insurance stood

cancelled before the accident on account of non-payment of the premium, it was not liable.

7. Admittedly, the appellant insurer on 20.8.1992 had issued an insurance cover note, copy Exh. RW 4A, in favour of the insured, owner of the

offending vehicle, covering the risk for the period 23.8.1992 to 22.8.1993. It is also an admitted fact that the premium towards this insurance was

paid by the insured by way of a cheque dated 20.8.1992 drawn on the State Bank of India, Rajban branch. Such cheque on having been

presented by the insurer for encashment through its bank was returned as dishonoured on 5.9.1992.

8. The case of the appellant insurer is that on the dishonour of the cheque, the insured was informed vide communication dated 21.9.1992, copy

Exh. RW 2B, that the cheque was dishonoured and in view of non-payment of the premium, the cover note issued stood cancelled from its very

inception.

9. The accident, admittedly, took place on 19.1.1993. It was, therefore, contended on behalf of the appellant insurer that since the accident had

taken place after the cover note was cancelled vide communication dated 21.9.1992, it was not liable under the contract of insurance.

10. The insured in its reply has denied the receipt of the communication dated 21.9.1992. The case set up by the insured is that it was never

informed either about the dishonour of the cheque or about the cancellation of the cover note. After the accident, it vide letter dated 25.1.1993

intimated the factum of accident to the appellant insurer with a request to arrange for the survey to assess the extent of damage caused to the

insured vehicle. In reply to this letter, the insured was, for the first time, informed that the cheque was dishonoured and that it would not be possible

to depute a surveyor. On the receipt of the reply dated 1.2.1993 from the appellant insurer, the insured on 3.3.1993 sent the amount of premium

by way of bank draft, which does not appear to have been accepted/encashed by the appellant insurer. It was, thus pleaded by the insured that

since it was never informed about the dishonour of cheque and the cancellation of the cover note, the appellant insurer was liable under the

contract of insurance and that the learned Tribunal has rightly held the appellant insurer to be liable.

11. Section 149 of the Motor Vehicles Act, 1988 (for short ''the Act'') casts a duty on the insurer to satisfy the judgments or awards against

persons insured in respect of third party risks. Sub-section (1) of Section 149 of the Act provides:

(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) of 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.

12. The Hon''ble Supreme Court in New India Assurance Co. Ltd. Vs. Rula and Others, has held that a contract of insurance, like any other

contract, is concluded by offer and acceptance. Normally, a liability under the contract of insurance would arise only on payment of premium if

such payment was made a condition precedent to the insurance policy taking effect. But such a condition, which is intended for the benefit of the

insurer, can be waived by the insurer. A contract of insurance relating to motor vehicles has to be understood in the light of the various provisions

contained in Chapter 11 of the Act. It was further held as under:

The contract of insurance in respect of motor vehicles has, therefore, to be construed in the light of the above provisions. Section 146(1) contains a

prohibition on the use of the motor vehicle without an insurance policy having been taken in accordance with Chapter 11 of the Motor Vehicles

Act. The manifest object of this provision is to ensure that 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, any contract of insurance under Chapter 11 of the Motor Vehicles Act, 1988 contemplates a third party who is not a signatory or a party to

the contract of insurance but is, nevertheless, protected by such contract. As pointed out by this Court in New Asiatic Insurance Co. Ltd. v.

Pessumal Dhanamal Aswani 1958 ACJ 559 (SC), the rights of the third party to get indemnified can be exercised only against the insurer of the

vehicle. It is thus clear that 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.

13. The learned Counsel for the appellant insurer, placing reliance on Section 64-VB of the Insurance Act, 1938, has contended that in view of the

provisions contained therein, the appellant insurer could not in law have assumed any risk under the policy of insurance covering the offending bus

until the premium has been paid by the insured. Since the premium, in the present case, was not paid inasmuch as the cheque which was given by

the insured towards the payment of the premium had been dishonoured, the appellant insurer was, therefore, not at risk and not liable for payment

of the amount of compensation that has been awarded in favour of various claimants-respondents.

14. In Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, dealing with the provisions contained in Section 64-VB of the Insurance Act,

1938, vis-a-vis the provisions contained in Chapter 11 of the Act, the Hon''ble Supreme Court has held:

We have, therefore, this position. Despite the bar created by Section 64-VB of the Insurance Act, the appellant, an authorised insurer, 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

Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy the

awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the

policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

The above ratio was followed in New India Assurance Co. Ltd. Vs. Rula and Others,

15. A contention was sought to be raised on behalf of appellant insurer that since no policy of insurance was issued in the present case, the ratio

laid down in the above referred two cases would be applicable in the present case.

16. There is no merit in the contention of learned Counsel for the appellant insurer. Section 145 (d) of the Act defines the "policy of insurance". It

says that policy of insurance includes certificate of insurance. Section 145 (b) defines ''certificate of insurance'' as under:

(b) ''certificate of insurance'' means a certificate issued by an authorised 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.

(Emphasis supplied)

17. Since admittedly a cover note, copy of which is Exh. RW 4A was issued, in view of the definition contained in Section 145 (b) above, a policy

of insurance would be deemed to have been issued.

18. Besides, Section 149 (1) which casts a duty on the insurer to discharge and satisfy the award made against the insured by fastening a liability

on it, does not speak of policy of insurance. It speaks of certificate of insurance which includes a cover note.

19. There is yet another aspect of the case. Though it is the case of the appellant insurer that the cover note Exh. RW 4A was cancelled well

before the accident vide communication dated 21.9.1992, Exh. RW 2B, nothing has come on the record to show that the said communication,

which is shown to have been sent by registered post, was actually posted. The best evidence in the form of postal receipt has not been produced.

So much so that even the Divisional Manager of appellant insurer while appearing as RW 2 has not stated that the communication Exh. RW 2B

was actually posted. He has deposed:

...The said cheque was sent for collection to the insured bank which was returned as dishonour by State Bank of India, Rajban branch through

Exh. RW 2A with the remarks ''referred to the drawer''. Thereafter we issued notice Exh. RW 2B to the insured bank and copy to Development

Officer.

(Emphasis supplied)

20. Thus, as per the appellant insurer own showing the communication Exh. RW 2B was sent by it to the bank of the insured and not to the

insured. Therefore, it cannot be said that the contract of insurance was cancelled/terminated validly before the accident in order to absolve the

appellant insurer from its liability.

21. The learned Tribunal has, therefore, rightly held the appellant insurer liable for payment of the amounts of compensation awarded in favour of

various claimants-respondents under the impugned award.

22. Resultantly, all the appeals being devoid of merit are dismissed leaving the parties to bear their own costs.