

(2014) 03 GAU CK 0032

Gauhati High Court

Case No: MAC App. No. 114 of 2005

National Insurance Co. Ltd.

APPELLANT

Vs

Nishi Bala Roy

RESPONDENT

Date of Decision: March 19, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147(4), 147(5), 149(1)

Citation: (2014) 3 ACC 579 : (2015) ACJ 1424

Hon'ble Judges: K. Sreedhar Rao, J

Bench: Single Bench

Advocate: S.S. Sarma, K.K. Bhatta, R.K. Bhatra, G. Jalan and S. Singh, Advocate for the Appellant; R.K. Agarwal, M. Talukdar and A.R. Agarwala, Advocate for the Respondent

Final Decision: Partly Allowed

Judgement

K. Sreedhar Rao, J.

Heard Mr. S.S. Sharma, learned Senior Counsel assisted by Ms. L. Sharma, learned Counsel for the appellant and Mr. A.R. Agarwal, learned Counsel for the respondent. One Madan Roy is the deceased. The deceased died while riding a bicycle. The bicycle of the deceased was hit by a bus and he died in a motor vehicle accident. The occurrence of the accident, the negligence of the driver of the offending vehicle, is not in dispute. The coverage of insurance is in dispute.

2. The appellant insurer issued a covering note as against the issuance of cheque against the policy. The cheque bounced for want of insufficient fund. The insurer wrote a letter to the insured intimating cancellation of policy for want of payment of premium. It is said that accident occurred after the cancellation of policy, therefore, insurer is not liable to pay compensation. The material date is 12th December, 2001 when the accident occurred. The cover note is issued on 28th September, 2001. The Bank challan disclosed that the information of dishonour of cheque for want of payment was issued on 1st November, 2001. The insurer has produced the postal

receipt to show that a registered letter was sent to the insured vide Ext. E(2). A copy of the covering letter is Ext. E. The Bank intimations are at Exts. D and DI. The respondent claimant, per contra, contends that there has been no valid communication of the cancellation of policy. Mere posting of registered letter does not mean that it was received by the insured. The insurer has not issued registered letter with acknowledgement. If done so the acknowledgement has been a valid proof of receipt. The insurer has not communicated the postal authorities nor communicated about the issuance of said letter to the insurer. In the absence of the clinching material, it is argued there is no valid cancellation of the policy on the date of accident, therefore, the insurer is liable to pay the compensation as per law.

3. It is further submitted that the cancellation of policy was not intimated to the concerned RTO as required under Sections 147(4), 147(5) and 149(1) of the M.V. Act and Rules.

4. On thorough consideration of the material on record, it is to be seen that the insurer has not proved a valid communication of the cancellation of policy to the insured. The insurer has of course produced valid document that the cheque was dishonoured and there is valid communication for cancellation of policy for want of payment of premium. However, without valid proof of communication of cancellation of policy, the insurer cannot avoid the claim of the third party.

5. In that view, the insurer is liable to be pay compensation as awarded by the Tribunal. The award made by the Tribunal is sound and proper and does not call for interference.

6. The deceased was aged about 60 years. The claimant is his wife. The income of the deceased is taken at Rs. 2,500 per month. Considering the age of the deceased, if 50% is deducted towards personal expenses of the deceased, the loss of dependency would be $1,250 \times 12 \times 9$ (multiplier) = 1,35,000. The claimant is entitled to Rs. 25,000 per month towards loss of consortium and Rs. 25,000 per month towards loss of expectancy and Rs. 10,000 as funeral expenses. In all the claimant would be entitled to compensation of Rs. 1,95,000. The amount awarded by the Tribunal is less than the entitlement. Therefore, the contention that the compensation is excessive is untenable. The insurer shall pay the compensation awarded by the Tribunal with right of recovery from the insured in the same proceeding by filing an execution case. Accordingly, the appeal is partly allowed.