

(2008) 11 JH CK 0008

Jharkhand High Court

Case No: None

National Insurance
Company Limited

APPELLANT

Vs

Ramjee Pandey and
Another

RESPONDENT

Date of Decision: Nov. 19, 2008

Acts Referred:

- Constitution of India, 1950 - Article 142
- Motor Vehicles Act, 1988 - Section 147, 149, 166

Citation: (2009) ACJ 2301 : AIR 2009 Jhar 77 : (2009) 1 JCR 145

Hon'ble Judges: M.Y. Eqbal, J; Jaya Roy, J

Bench: Division Bench

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

This appeal by the appellant-Insurance Company is directed against the judgment and award dated 23rd January, 2004 passed by the Motor Accident Claims Tribunal, Bokaro in Title (Motor Vehicle) Suit No. 32 of 1997 whereby he has awarded compensation and held that the appellant-Insurance Company is liable to pay the same.

2. The brief fact of the case is that the respondent-applicant Ramjee Pandey filed a compensation case u/s 166 of the Motor Vehicles Act on account of death of his wife Rameshwari Devi. The accident took place on 08.4.1996 on Bokaro-Ramgarh Road where she was dashed by a truck bearing Registration No. BR-13H/9259. Besides other facts, it was mentioned in the application that the vehicle in question was insured with the appellant-Insurance Company and was valid from 24.3.1996 to 23.3.1997. The applicant's further case was that the deceased was a housewife and was managing the affairs of the house. Due to death of the deceased, applicant has

been facing several hardships and frustration.

3. In spite of service of notice, the respondent-owner of the vehicle, did not file written statement. The claim was contested only by the Insurance Company on various grounds inter alia that on the date of accident, the vehicle was not insured. It was the specific case of the Insurance Company that the respondent-owner for the purpose of insuring his vehicle issued a cheque dated 23.2.1996 for Rs. 5645/in favour of the Insurance Company. On receipt of the cheque, the insurance policy was issued and the cheque was sent to the bank for clearance. Subsequently on 29.3.1996, the said cheque was dishonoured by the bank. The Insurance Company, consequently, cancelled the policy and informed the owner of the vehicle by letter dated 04.4.1996. Further case of the appellant-Insurance Company is that after the insurance policy was cancelled, the alleged accident took place on 08.4.1996 on which date, the vehicle was not validly insured. However on 12.4.1996, the respondent-owner took a fresh policy on payment of premium which was effective from 12.4.1996 to 11.4.1997.

4. As noticed above, the respondent-owner of the vehicle did not file any written statement nor took any defence in the suit. The claimant and the Insurance Company adduced oral and documentary evidences which have been discussed by the Tribunal in the impugned judgment. Paragraphs 13 to 16 of the impugned judgment are worth to be quoted herein below:

13. DW.1 has stated that this cheque was issued by Tribhuban Singh and he was saving account in his bank and his savings account number is 2288. This witness has clearly stated that cheque number 882512 dated 22.3.96 was issued by Tribhuban Singh in the name of National Insurance Co. Ltd. of Rs. 5,645/- and this cheque was sent for clearance but due to insufficient fund this cheque was returned with certificate. He has further stated that on this cheque Tribhuban Singh signed which has been marked Ext.A. He has also admitted that on this return certificate the branch manager Pandeyji has signed which has been marked Ext.B. He has also admitted that at that time in the account of Tribhuban Singh only Rs. 461.96 paise was available and due to insufficient fund that cheque was dishonoured.

14. D.W.2 has stated that the account of National Insurance Co. Ltd is available in his bank and this cheque was present in this bank by National Insurance Co Ltd and this cheque was sent to Phusro State bank but due to insufficient fund this cheque was dishonoured and the endorsement on the document has marked Ext.A/1 and the next endorsement has been marked Ext.A/2. This witness has further proved the document which has been marked Ext.C.

15. D.W.3. has stated that he is employee of Insurance Co. Ltd. This witness has clearly stated that Truck No. BR-13-H-9259 was insured by his office. He has clearly stated that the owner of this truck namely Tribhuban singh issued a cheque of Rs. 5,645/- by cheque No. 882512 dated 22.3.96. But after receiving the cheque the

policy was issued in the favour of Tribhubhan Singh and this was issued on this condition subject to the realisation of the cheque. This witness has further stated that this is the copy of the policy which is in printed form and the then Asstt. Branch Manager Suraj Kumar Choudhary put his initial signature on this document which has been marked Ext.D. This witness has also deposed that the cheque which was issued by Tribhuban Singh was dishonoured due to insufficient fund in his account and in such circumstances the policy which was issued on 24.3.96 was cancelled by the department. He has further stated in para-4 that if the policy has been cancelled in such condition the company is not liable for any payment. He has further admitted that the information of this cancelled policy was given to the owner namely Tribhuban Singh. He has also proved the office copy which have been marked Ext.E. He has deposed that on 12.4.96 Tribhubhan Singh came in the office of insurance policy and deposited the premium amount and after payment then the company issued again the policy in the name of Tribhuban Sing who is the owner of the vehicle. he has clearly stated that the policy was issued again which was effective from 12.4.96 to 11.4.97 and the copy of the policy have been proved by this witness which has been marked Ext.F. Although this witness has clearly stated that the occurrence took place on 8.4.96 and in such circumstances the company is not liable to pay compensation. But the owner of the offending vehicle Tribhuban Singh is liable to pay the compensation amount because on the date of accident there was no contract between the owner of the vehicle and the Insurance Company. This witness has clearly stated that policy number of 170402/96/31/21/2064. He has further admitted that owner of the truck deposited premium amount on 12.4.96. This witness has clearly denied this suggestion given by the Id. lawyer of the applicant that in such situation the company is liable to pay compensation amount.

16. Therefore, I find and hold that the plaintiff/claimant is entitled for the amount of compensation for the accidental death of his wife namely Rameshwari Devi and the defendant No. 3 National Insurance Co. Ltd. is liable to pay such amount of compensation to the claimant. From perusal of the case record, the evidence of the witnesses and the document it transpires that the driver of the offending vehicle driving the truck bearing No. BR-13-H-9259 rashly and negligently and due to this accident has taken place for which criminal case was registered.

5. From perusal of the finding, it is evidently clear that the Tribunal even after considering the defence taken by the Insurance Company supported by documents, held that the Insurance Company is liable to pay the compensation amount.

6. As discussed above, it has been proved by the Insurance Company by adducing evidence that the policy issued on 24.3.1996 was cancelled on 04.4.1996 because of dishonour of cheque on 29.3.1996. It is also the specific case of the Insurance Company that on 12.4.1996, the respondent-owner of the vehicle came in the office of the Company and took a fresh policy on payment of premium. These facts have not at all been denied or disputed by the owner of the vehicle. In such

circumstances, in our considered opinion, the Tribunal has committed grave error of law in holding that the claimant is entitled to get compensation from the appellant-Insurance Company. In this regard, the law has been well settled by the Supreme Court in the case of Deddappa and Ors. v. The Branch Manager, National Insurance Co. Ltd. [(2008) SCCR 224. In that case also, although the vehicle in question was insured for the period 17.10.1997 to 16.10.1998, but the cheque issued thereof having been dishonoured, the policy was cancelled by the Insurance Company. The Supreme Court after discussing various decisions held:

26. We are not oblivious of the distinction between the statutory liability of the insurance company vis-à-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 under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.

27. A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In Regional Director, ESI Corporation v. Ramanuja Match Industries, air 1985 278, this Court held: "We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.

We, therefore, agree with the opinion of the High Court.

7. Coming back to the instant case, indisputably the insurance policy was cancelled on 04.4.1996 because of dishonor of cheque issued in favour of the Insurance Company by the owner of the vehicle towards payment of premium and the owner of the vehicle was duly informed. After the policy was cancelled on 04.4.1996, the alleged accident took place on 08.4.1996. The owner of the vehicle instead of disputing cancellation of policy, took a fresh policy on 12.4.1996 on payment of premium in cash. In spite of service of notice of the claim case before the Tribunal, the owner neither filed any written statement nor took any defence in the suit. Even in this appeal, in spite of notices issued on several occasions, the respondent has not appeared. In the aforesaid premises, the Tribunal ought not to have held that the Insurance Company is liable to pay compensation. The aforesaid findings with regard to liability determined by the Tribunal cannot be sustained in law.

8. Mr. S. Thakur, learned Counsel appearing for claimant- respondent, however submitted that in the case before the Supreme Court [(2008) SCCR 224], although the Supreme Court decided the law, but directed the Insurance Company to satisfy

the award and recover the amount from the owner of the vehicle. For better appreciation, paragraph 28 of the said decision the Supreme Court is quoted herein below:

28. However, as the appellant hails from the lowest strata of society, we are of the opinion that in a case of this nature, we should, in exercise of our extraordinary jurisdiction under Article 142 of the Constitution of India, direct Respondent 1 to pay the amount of claim to the appellants herein and recover the same from the owner of the vehicle viz. Respondent 2, particularly in view of the fact that no appeal was preferred by him. We direct accordingly.

9. Hence, we are unable to issue such direction directing the appellant-Insurance Company to pay the compensation amount and recover the same from the owner of the vehicle, for the reason that the Supreme Court in exercise of its extraordinary jurisdiction under Article 142 of the Constitution of India issued such direction. Hence, no direction can be issued directing the Insurance Company to the pay compensation amount and recover the same from the owner of the vehicle.

10. For the reasons aforesaid, this appeal is allowed and it is held that the respondent-owner of vehicle is liable to pay compensation as determined by the Tribunal.