2. Ramesh Chandra

3. National Insurance Company Limited through Regional Manager, Regional Office, 10 Narain Singh Road, Jnarain Singh Circle, Jaipur

----Respondent

For Insurance Co.(s) : Mr. Ganesh Joshi
For Claimants(s) : Mr. Lokesh Gaur
Ms. Sapna Saxena

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND
Judgment

Reportable

04/04/2023

1. Both these appeals are arising out of the award dated 13.08.2002 passed by the Motor Accidents Claims Tribunal, Shahpura, District Jaipur (for short 'the Tribunal') in MAC Case No. 539/2001 by which the claim petition filed by the claimants has been allowed and the respondent-Insurance Company has been directed to pay compensation of Rs. 1,88,000/- to the claimants.

2. Feeling aggrieved and dissatisfied by the above award, both the Insurance Company as well as the claimants have preferred these appeals.

3. With the consent of the parties, both matters are taken up and heard together and are being decided by this common judgment.

4. Brief facts of the case are that on 28.05.1996, the deceased Ghisa Lal met with an accident caused by the driver of bus No. DL 1P 0339. After the aforesaid accident, the claimants submitted the claim petition before the Tribunal against the driver,

owner and Insurance Company of the vehicle. In spite of receipt of notice, the driver as well as the registered owner of the vehicle did not appear before the Tribunal, hence ex-parte proceedings were initiated against them vide order dated 07.11.1997. The Insurance Company submitted its reply and denied the averments of the claim petition and submitted that the vehicle in question was not insured on the date of accident i.e. 28.05.1996. It was pleaded in the reply that for renewal of the insurance policy, premium was paid by the registered owner of the vehicle to the Insurance Company vide cheque No. 201745 on 04.10.1995 and on the basis of the said cheque, a cover note was issued. Subsequently, the aforesaid cheque was dishonoured and hence the insurance policy was cancelled by the Insurance Company on 08.12.1995 and an intimation in this regard was sent to the registered owner of the vehicle by registered post. It was also pleaded by the Insurance Company before the Tribunal that since the vehicle was not insured on the date of accident, hence the Insurance Company is not liable to pay any amount of compensation to the claimants.

5. After hearing the arguments of both side, the Tribunal discarded the plea taken by the Insurance Company and allowed the claim petition filed by the claimants directing the Insurance Company as well as the registered owner and driver of the vehicle to pay the amount of compensation of Rs. 1,88,000/- to the claimants.

6. Counsel for the Insurance Company submits that the accident occurred on 28.05.1996. He further submits that the registered owner of the vehicle issued a cheque bearing No. 201745 for renewal of the insurance policy of the vehicle in

question and on the basis of the said cheque, a cover note was issued to the registered owner on 04.10.1995. He further submits that the said cheque was dishonoured. The payment of premium was not satisfied, hence the policy was cancelled by issuing registered notice to the registered owner of the vehicle on 08.12.1995. Counsel further submits that after lapse of long time, the registered owner again issued another cheque bearing No. 214721 for renewal of the insurance policy on 31.05.1996 and on the basis of the said cheque again a cover note was issued. He submits that the said cheque was also dishonoured and again the policy issued in favour of the registered owner was cancelled on 26.06.1996. He further submits that thereafter the registered owner submitted a demand draft of the premium amount to the Insurance Company on 16.07.1996 and on the basis of that, a fresh / renewed insurance policy was issued to him. Counsel submits that under these circumstances it is clear that the vehicle in question was not insured on the date of the accident, but the Tribunal has committed an error in discarding all these material facts, which were available on record. Counsel submits that the Tribunal has committed an error in putting burden on the Insurance Company to make the payment of compensation to the claimants. In support of his contentions, the counsel has placed reliance upon the judgment of Hon'ble Apex Court in the case of **Oriental Insurance Co. Ltd. Vs. Sunita Rathi and others** reported in **AIR 1998 [Vol. 85] S.C. 257** and another judgment of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Jikubhai Nathuji Dabhi and Others** reported in **1997 ACJ [Volume I] 351**. Counsel submits that under these

circumstances, interference of this court is warranted and appropriate orders may be passed in favour of the Insurance Company.

7. None has put appearance on behalf of the registered owner and driver of the vehicle in question.

8. Counsel for the claimants has opposed the arguments raised by the counsel for the Insurance Company and has submitted that the owner of the vehicle was having a valid insurance policy at the time of accident i.e. 28.05.1996. He further submits that the owner of the vehicle was never served with any kind of notice by the Insurance Company on 08.12.1995 indicating therein that the policy was cancelled because of dishonouring of cheque No. 201745. He further submits that the Insurance Company has issued the notice on 26.06.1996, while the accident has occurred on 28.05.1996. He further submits that the policy issued in favour of the registered owner was in existence at the time of accident, hence the Tribunal has not committed any error in passing the impugned award directing the Insurance Company to make the payment of amount of compensation to the claimants.

9. He further submits that while deciding the claim petition, the Tribunal has not taken into consideration the age of the deceased and the number of the dependents of the deceased and no amount under the head of "future prospects" has been awarded. He further submits that the age of the deceased was 43 years at the time of accident and looking to the age of the deceased, the Tribunal should have applied the multiplier of 14, but without any basis multiplier of 13 has been applied. He further

submits that the dependents were 6 in number, but the Tribunal has deducted 1/3rd amount towards "personal expenses" of the deceased instead of 1/4th amount. He further submits that in the light of the judgment of Hon'ble Apex Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and Ors. : (2017) 16 SCC 680**, the amount of compensation awarded by the Tribunal is liable to be enhanced by this Court.

10. Heard and considered the rival submissions made at the bar and perused the material available on record.

11. Now this Court proceeds to deal with the factual aspect of this matter.

12. The issue involved in these appeals is "Whether Insurance Company is liable to cover third party risk, when the insured fails to pay the premium, or when the cheque issued by him towards the premium is returned / dishonoured by the bank?"

13. Before dealing with the facts of this case, this Court proceeds to refer and discuss the relevant provision for adjudication of above legal issue.

14. Insurance is a contract whereby one undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event and is applicable only to same contingency or act to occur in future. The provision of Section 64 VB of the Insurance Act, 1938 (for short 'the Act of 1938') provides that an Insurance Company will not assume / accept risk unless insurance premium is received in advance or before the date of assumption of risk. For ready reference Section 64 VB of the Act of 1938 is reproduced as under:-

"**64-VB. No Risk to be assumed unless premium is received in advance**

(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation. ~ Where the premium is tendered by postal money-order or cheque sent by post, the risk may be assumed on the date on which the money-order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money-order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collections excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) In respect of particular categories in insurance policies.

(6) the Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer."

15. The Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Seema Malhotra and Ors.** reported in **(2001) 3 SCC 151** in para 14 to 18 held as under:

"14. Sub-section (1) is not applicable to cases in which premium is ordinarily payable outside India. In other words, the insurer has no liability to the insured unless and until the premium payable is received by the insurer. As the premium can be paid in cash or by cheque, what is the position when the cheque issued to the insurer is dishonoured by the drawee bank?

15. Sections 51, 52 and 54 of the Indian Contract Act can profitably be referred to for the purpose of deciding the point. They are subsumed under the sub-title Performance of reciprocal promises in the said Act. Section 51 deals with a contract concerning reciprocal promises to be simultaneously performed and in such a contract the promisee is absolved from performing his promise unless the promisor is ready or willing to perform his part of the promise. Section 52 says that where the order in which reciprocal promises are to be performed has not been expressly provided in the contract such promise shall be performed in that order which the nature of the transaction warrants it. Illustration (b) given to Section 52 highlights the utility of the provision. That illustration is as follows: A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promise to give security for the payment of the money. As promise need not be performed until the security is given, for the nature of transaction requires that A should have security before he delivers up his stock.

16. Section 54 of the Contract Act is to be read in that background. It is extracted below:

> "54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract."

> 17. In a contract of insurance when an insurer gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a Bill of Exchange drawn on a specified banker. A Bill of Exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.
>
> 18. Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation."

16. In today's world payment made by cheque is ordinarily accepted as valid tender Section 64 VB of the Act of 1938 also provides for such a scheme. Payment of cheque, however, is subject to its encashment.

17. In the case of **Deddappa and Ors. Vs. Branch Manager, National Insurance Company Limited**, reported in **(2008) 2 SCC 595**, Hon'ble Apex Court has held that any liability 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 informed thereabout, the insurance company would not be liable to satisfy the claim.

18. Hon'ble Supreme Court in the case of **United India Insurance Company Limited Vs. Laxmamma and Ors.**, reported in **(2012) 5 SCC 234** has held if the insurance cover note is issued subject to payment of cheque amount and if the cheque get dishonoured and the insurance company cancels the

insurance policy under intimation to the owner of the vehicle before the accident, then the insurance company is not liable to satisfy the award of compensation. Hon'ble Apex Court has held in para 26 as under:-

> "26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Section 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."

19. This fact is not in dispute that the accident occurred on 28.05.1996. The documents available on record indicates that a cheque bearing No. 201745 (Ex.D-8A) was issued by the registered owner of the vehicle in favour of the Insurance Company on 04.10.1995. The said cheque was dishonoured by the banker on 13.10.1995 with the remark 'funds insufficient'. Under these circumstances, the Insurance Company cancelled the policy by issuing registered notice to the owner of the vehicle on 8.12.1995 vide Ex.D-9. In support of his contention, the original

registered post receipt bearing No. 3007 has been placed on record which indicates that a registered notice was sent to the registered owner and the driver, on 08.12.1995. It appears that subsequently the registered owner of the vehicle issued another cheque bearing No. 214721 for renewal of the Insurance Policy of the vehicle in question and again a cover note was issued to him on the same day, but again the cheque was dishonoured and the policy was cancelled on 26.06.1996 by sending registered post notice to the owner of the vehicle. Thereafter, the registered owner submitted a demand draft to the Insurance Company on 16.07.1996 and on the basis of the same, third time, the policy was renewed. The Tribunal has recorded a finding while deciding issue No. 4 that the accident has occurred on 28.05.1996 and the cheque was dishonoured on 13.10.1995 and a notice for cancellation was issued on 08.12.1995 after a delay, without having any explanation of such delay and the policy was cancelled on 26.06.1996. It appears that the Tribunal has not taken into consideration the evidence of the witness Neeraj Bhargav (NAW-1) and the documents placed on record. The evidence of the witness Neeraj Bhargav (NAW-1) and the documents placed in support of the contention clearly indicates that the vehicle was not insured on the date of accident and the Tribunal has committed an error in deciding the issue No. 4 against the Insurance Company.

20. It is worthy to note here that no prudent person or owner of any vehicle would issue two cheques and one demand draft for renewal of the insurance policy. Here in this case twice the cheques issued by the owner were dishonoured and the Insurance Company did not receive the premium amount prior to

the date of accident. Thus, the findings recorded by the Tribunal on issue No. 4 is quashed and set aside and it is held that the Insurance Company is not liable to make the payment of compensation to the claimants.

21. Now this Court proceeds further to decide the other issue, "Whether the Tribunal has awarded suitable amount of compensation to the claimant or not?"

22. Looking to the age of the deceased i.e. 43 years, the multiplier of 14 should have been applied but in the instant case, the multiplier of 13 has been applied without any basis. Looking to the total number of the dependents of the deceased, the Tribunal should have deducted 1/4th amount towards "personal expenses" of the deceased instead of 1/3rd amount. The claimants were entitled to get 25% additional amount under the head of "future prospects" in the light of the judgment of Hon'ble Apex Court in the case of **Pranay Sethi and Ors.** (supra), hence the amount of compensation is recalculated as under:-

Income	Rs.18,000/- per annum
25% towards Future Prospects	Rs. 18000 + Rs.4500 =Rs. 22,500/-
Deduction 1/4th (towards personal expenses)	Rs. 22,500/- x 3/4 = Rs. 16,875/-
Multiplier to be applied	14 Rs. 16,875x14= Rs. 2,36,250/-
Add under conventional head	Rs. 70,000/-
Total Compensation awardable	Rs. 2,36,250+ Rs. 70,000 = Rs. 3,06,250/-
Less amount awarded by the Tribunal	Rs. 3,06,250/- - Rs. 1,88,000/- = Rs. 1,18,250/-
Enhanced amount of compensation	Rs. 1,18,250/-

23. Thus, an amount of Rs. 1,18,250/- is enhanced in the present case. In the result, the appeal filed by the Insurance Company stands allowed and the appeal filed by the claimants

stands disposed of with directions to the respondent/non-claimant Nos. 1 and 2, owner and driver of the vehicle in question, to pay the amount awarded by the Tribunal after adding the enhanced amount i.e. Rs. 3,06,250/- to the claimants with interest @ 6% per annum from the date of filing of the claim petition till its actual realisation.

24. With the aforesaid reasons, the impugned award stands modified accordingly. Stay application and all application(s) (pending, if any) also stand disposed of accordingly.

(ANOOP KUMAR DHAND),J

MR/13-14