Karnataka High Court Oriental Insurance Co. Ltd. vs Syaribai on 23 February, 1994 Equivalent citations: II (1994) ACC 688, 1995 ACJ 663, ILR 1994 KAR 2031, 1994 (3) KarLJ 151 Author: M Ramakrishna Bench: M Ramakrishna, V . Kumar JUDGMENT M. Ramakrishna, J. 1. The appellant - insurer being aggrieved by the judgment and award made in M.V.C. 1171/1989, disposed of on the 8th of July, 1993, by the Motor Accidents Claims Tribunal, 8th Metropolitan Court, Bangalore City, has come up with this Appeal challenging the correctness and legality of the finding recorded against the insurer fixing the liability to make good the amount of compensation awarded, on more than one ground. 2. We have heard Sri Shankar, learned Counsel for the appellant, who took us through the judgment and award and argued that, at the outset the Member of the Tribunal was in error in having held in paragraph 16 that having regard to the evidence on record - both oral as well as documentary - the policy issued by the insurer in respect of the motor vehicle in question was valid and therefore the insurer was liable to indemnify the insured and therefore directing to pay the compensation. To substantiate his argument Sri Shankar, learned Counsel, took us through the provisions of Section 96(2)(c) which reads as follows; Section 96(2)(c) : "That the policy is void on the ground that it was obtained by the non-disclosure of a material factor by a representation of fact which are false in some material particular." 3. In view of the specific provision of law referred to above, the submission of the learned Counsel is that on 30-3-1989 a cheque for a sum of Rs.2039/- was given by the insured in favour of the insurer arid accordingly a cover note Ex. R1 and a receipt Ex.R2 were issued in respect of lorry bearing Reg.No. MYR 3602, subject to the condition that receipt will be valid subject to realisation of cheque. This condition is at Ex.R2(a). It was dishonoured for want of money and accordingly the Bank by his intimations Exs.R4 & R5 informed the insurer. On being informed, the insured requested the insurer to represent the cheque on 13-4-1989, for collection. Accordingly, the cheque was presented later and was honoured and the amount therein was collected on 13-4-1989. Therefore, according to Shri Shankar, on the date of accident on 11.4.89, no amount was paid to the insurer in respect of the policy covering the vehicle in question. Therefore, it was not valid and hence the insurer was not liable to indemnify the insured for the accident involving the vehicle in question. In support of his submission he relied upon the Decision of this Court in the case of SMT ASMA BEGUM AND ORS. v. NISAR AHMED AND ORS . This Court, having regard to the facts and circumstances of the case, held; "(ii) In view of Sec. 64(V)(B) of the insurance Act, the risk on the part of the insurer commences only on the payment of the premium by the insured." Therefore, Sri Shankar submitted that this was a fit case in which the finding recorded by the Tribunal against the appellant to make good the compensation awarded had to be set aside. 3. We have carefully gone through the original records made available including the depositions. R.W. - 1 - Sathyanarayana - the Administrative Officer of the appellant - Company, has stated in his cross-examination that the cheque issued by the insured - R. 5 having been bounced by the Bank, the insured asked the insurer to re-present the cheque on 13-4-89 and subsequently the cheque was represented and the amount was realised.

4. It is pertinent to note that Rangaswamy - (R.W.2) examined on behalf of the insured has nowhere stated in his examination-in-chief that the money under the cheque issued by the insured had been realised by the insurer before the accident on 11-4-89. On the other hand, he had not disputed that on instruction given by the insured to re-present the cheque on 13-4-89 the cheque was re-presented accordingly and the amount realised. Though he asserts in the cross-examination that on payment of premium, the cover note and the receipt Ex.R1 and R2 respectively were issued, in view of his admission that a cheque was issued for a sum of Rs. 2400/- and odd his assertion falls through. 5. The learned Counsel for the insured contended that the insurer should have taken immediate steps tor cancellation of the policy by giving special notice to the insured, the moment the cheque issued by the insured was bounced and since the insurer failed to do so, the liability of it continued. Therefore, the Tribunal rightly fixed liability on it. This contention is one without force, in view of the recent Judgment of the Supreme Court in UNITED INDIA INSURANCE CO. LTD. v. AYEB MOHAMMED AND ORS 1991 ACJ 650 (SC). Having regard to the facts and circumstances and the question of law arising therefrom, it held as follows: "In the impugned Judgment the High. Court has taken the view that in the absence of steps taken for cancelling the cover note, the insurer's liability continued, although the bouncing of the cheque and steps taken by the insurer cancelling the risk note have been found as a fact. The insurer had issued notice to the registering authority and parties that the cheque bounced and the liability ceases but the High Court has recorded a finding that the notice of cancellation has not been served on the insured. The fact that the cheque had bounced was a matter within the knowledge of the insured. At any rate, there would be that presumption and therefore, in ordinary circumstances, no special notice would be required." In view of the law declared as above by the Supreme Court the contention of the learned Counsel for the insured is rejected. At this stage, the learned Counsel for the respondent-insured has drawn our attention to the Explanation provided under the provisions of Section 64(V)(B) of the Insurance Act which reads: Explanation XV: When 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." Based on this explanation, the argument of the learned Counsel for the insured-respondent-5 is that the liability of the insurer could be assumed from the date on which the cheque had been tendered or sent by post. In otherwords, his argument is that even before the realisation of the money under the cheque, the risk may be assumed as against the insurer. It is difficult to accept this submission of the learned Counsel because as could be seen from the language employed in the Explanation, in the ordinary course of action any money sent by postal money order or cheque sent by post, the risk may be assumed provided the money under the cheque had been realised in the usual course. But, the Explanation does not deal with a case where the cheque is bounced, Therefore, it is enough for us to say that the Explanation cannot be applied to the facts of this case. Before parting with this case we may also point out one fact that the original records made available contain endorsement

issued at (Ex.R4) and the memo (Ex.R5) attached to it by the Syndicate Bank, Munirabad Branch on 8-4-89, informing the insurer of the factum of dishonour of the cheque for want of funds. It is made clear that the branch of the insurance office is in Hospet. Having regard to the short distance between Munirabad and Hospet and even assuming that the following two days were general holidays, the insurer might have received the intimation of dishonour of the cheque in a day or two later and thereafter on coming to know of the factum of bouncing the cheque, the insured might have made arrangements to make good the amount in the Bank and accordingly informed the insurer to represent the cheque on 13-4-1989. These are the material evidence borne out from the records which is sufficient to enable us to presume that the insured has suppressed the fact of accident having taken place on 11-4-89 and made good the amount in the Bank immediately thereafter in order to avoid his liability, 6. In view of the foregoing, the Appeal succeeds, In the result, the Appeal is allowed. The finding recorded by the Tribunal in paragraph 16 of the judgment fastening the liability against the insurer-appellant is set aside, in modification of the judgment and award, it is now directed that the insured-respondent - 5 shall make good the amount awarded under the judgment and award. Ordered accordingly.