Oriental Insurance Co.Ltd vs Inderjit Kaur & Ors on 8 December, 1997

Equivalent citations: AIR 1998 SUPREME COURT 588, 1998 (1) SCC 371, 1998 AIR SCW 183, 1998 (118) PUN LR 192, 1997 (7) SCALE 488, 1999 SCC(CRI) 148, (1998) 1 PUN LR 192, 1998 (1) BLJR 697, 1998 (1) ALL CJ 523, (1998) 1 KER LT 23, 1998 BLJR 1 697, (1998) 1 MAD LW 11, (1998) 1 SCJ 290, (1998) 1 ICC 780, (1997) 7 SCALE 488, (1998) 1 ACJ 123, (1997) 4 CURCC 199, (1997) 10 SUPREME 289, (1998) 91 COMCAS 306, (1998) 1 ACC 1, (1998) 1 LS 38, (1998) 1 MAD LJ 78, (1998) 1 RECCIVR 227, (1998) 1 TAC 615, (1998) 2 CIVLJ 878

Bench: Chief Justice, S.P. Bharucha, S.C. Sen

PETITIONER:
ORIENTAL INSURANCE CO.LTD.

Vs.

RESPONDENT:
INDERJIT KAUR & ORS.

DATE OF JUDGMENT: 08/12/1997

BENCH:
CJI, S.P. BHARUCHA, S.C. SEN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T BHARUCHA,J.

Leave granted.

This appeal is heard by a Bench of 3 Judges because learned counsel for the appellant, the Oriental Insurance Co. Ltd., had submitted that the decision of this Court in United India Insurance Co.Ltd,

vs Ayeb Mohammed & Ors., 1991 (2) ACJ 650, had been misread by the Motor Accident Claims Tribunal and the High Court and that, while the appellant would pay the amount of compensation awarded in this matter it desired, in view of the general importance or the question, an authoritative pronouncement.

For the purposes of the appeal, therefore, very few facts are relevant, A bus met with an accident, Its policy of insurance was issued by the appellant on 30th November, 1989. The premium for the policy was paid by cheque. The cheque was dishonoured. A letter stating that it had been dishonoured was sent by the appellant to the insured on 23rd January, 1990. The letter claimed that, as the cheque had not been encashed, the premium on the policy had not been received and that, therefore, the appellant was not at risk, The premium was paid in cash on 2nd May, 1990. In the meantime, on 19th April, 1990, the accident took place: the bus collided with a truck, whose driver died. The truck drivers widow and minor sons filed the claim petition. The appellant denied the claim asserting that under the terms of Section 64-VB of the Insurance Act, 1938, no risk was assumed by an insurer unless the premium thereon had been received in advance. The Motor Accident Claims Tribunal rejected the appellants contention and awarded the claimants compensation in the sum of Rs.96,000/- with interest at the rate of 12 per cent per annum from the date of the petition, to be paid by the insured and the appellant jointly and severally. The appeal filed by the appellant before the High Court of Punjab & Haryana was summarily dismissed, and it is that order which is now under challenge.

Mr.Jitender Sharma, learned counsel for the appellant, relied upon Section 64-VB of the Insurance Act. It reads thus:

> "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.
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> (2) For the purposes of this section, in the case of risks for which p 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 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 on an insurer, he shall deposit with, or despatch by post to, the insurer, the p premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

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

Mr. Sharma submitted that, in view of the provisions of Section 64-VB of the Insurance Act, the appellant could not in law have assumed any risk under the policy of insurance covering the bus until the premium had been paid. The premium had not been paid inasmuch as the cheque that had been given to the appellant by the insured in payment of the premium had been dishonoured. The appellant was, therefore, not at risk and not liable to pay any any of the compensation that had been awarded.

Mr.Sharma relied upon the decision in the case of United India Insurance Co.Ltd. vs Ayeb Mohammed (ibid. The Orissa High Court had upheld the award of compensation in the sum of Rs15,000/- against the insurer on the footing that it had issued a cover note undertaking the risk. The insurers stand was that the cheque covering the premium had bounced and, in the absence of payment, the cover note it had issued had become ineffective and there was no policy which obliged it to pay the compensation. The view of the High Court was that, in the absence of steps to cancel the cover note, the insurers liability continued although the bouncing of the cheque and the steps taken by the insurer cancelling the risk note had, this court said, been found as a fact. The insurer had issued a notice to the registering authority and the parties that the cheque had bounced and the liability had ceased but the High Court had recorded a finding that the notice of cancellation had not been served on the insured. This Court then said:

> "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.
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> 5. Since Mr.Madan had told us at the commencement of the hearing of the matter that the amount being small he was not interested in disputing the liability to pay in this case but the insurer would like to have the principle of law decided, we do not think it is necessary to issue notice to the respondents.
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> 6. In the setting indicated we are of the view that the High Court was not right in holding that in the absence of steps for cancellation of the cover note, the risk would be subsisting but as Mr.Madan has himself stated, we do not interfere with the decision of the High Court requiring the sum of Rs.15,000/- to be paid by the insurer." We find it is difficult to conclude that the judgment in the case of United India Insurance Company Ltd. vs.Ayeb Mohammed decides a principle of law because no notice had been issued on the special leave petition. At the same time, the opinion is expressed in the judgment that the High Court was in error in holding that,

in the absence of steps to cancel the cover notre, the risk would subsist.

Chapter 11 of the Motor Vehicles Act, 1988, provides for the insurance of motor vehicles against third party risks. Section 146 thereunder states that no person shall use or cause or allow any other person to use a motor vehicle in a public place unless there is in forced in relation to the use of the vehicle a policy of insurance that complies with the requirements of the Chapter. Section 147 sets out the requirements of policies and the limits of liability. A policy of insurance, by reason of this provision, must be a policy which is issued by a person who is an authorised insurer. Sub-section 5 reads thus:

"(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons." Section 149 refers to the duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. Subsection (1) thereof reads thus:

"(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 163A) 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 judgment." 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 with out receiving the premium therefor. By reason of the provisions of Section 147(5) and 149(1) of the Motor Vehicles Act , the appellant became liable to identify third parties in respect of the liability which that policy covered and to satisfy 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 policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured.

We may note in this connection the following massage in the case of Montreal Street Railway Company vs.Normandin, A.I.R.1917 Privy Council 142;

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice go persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.' It must also be noted that is was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64-VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant.

We are of view, in the circumstances, that the observations in the case of United India Insurance Co.Ltd. vs Ayeb Mohammed do not lay down good law.

The appeal is dismissed. The respondents not having appeared, there shall be no order as to costs.