New India Assurance Co. Ltd vs Rula & Ors on 7 March, 2000

Author: S. Saghir Ahmad

Bench: S.S.Ahmad, R.P.Sethi

PETITIONER:
NEW INDIA ASSURANCE CO. LTD.

Vs.

RESPONDENT:
RULA & ORS.

DATE OF JUDGMENT: 07/03/2000

BENCH:
S.S.Ahmad, R.P.Sethi

JUDGMENT:

S. SAGHIR AHMAD, J.

Leave granted. The appellant had insured Truck No. CII-7928 on 8.11.1991 and issued an Insurance Policy in terms of the requirements of the Motor Vehicles Act, 1988. The Insurance Policy, which has been filed as Annexure P-1 to this petition, is headed as "MOTOR VEHICLES ACT, 1988 (GOODS CARRYING VEHICLE), SCHEDULE - POLICY `A' (Act only) - Certificate No. 006424 Policy No. 3145070606875". The same day, at midnight, it met with an accident, in which three occupants, namely, Tetia @ Ramlal (Cleaner) and two labourers, Bada and Bhakla, died. Their dependants filed three Claim Cases, viz. No.156/91, 157/91 and 158/91 before the Motor Accident Claims Tribunal, Barwani, M.P., which were contested by the appellant on the ground, inter alia, that the truck was not covered by any insurance policy, inasmuch as the truck-owner had obtained the Insurance Policy on the basis of a cheque dated 8.11.1991 towards payment of premium, but this cheque was dishonoured on 16.11.1991 with the result that the Insurance Policy itself was cancelled. The contention of the appellant was not accepted by the Tribunal, which decreed all the three claims by its award dated 25.1.1996, directing payment of Rs.48,200/- as compensation in Case No. 156/91; Rs.1,16,000/- in Case No. 157/91 and Rs.67,600/- in Case No. 158/91. These awards were challenged by means of three appeals filed in the High Court which, by its judgment dated 28.9.1998, dismissed the appeals. Now, the present appeals. We have heard learned counsel for the appellant whose principal contention has been that the Policy of Insurance represents a contract between the insurer and the insured, for consideration in the form of premium. It is contended that if premium is not paid, the contract would not be valid as there cannot be any contract without consideration. Reliance for this purpose has been placed by learned counsel for the appellant on

various provisions of the Contract Act, 1872 and it is contended that since the cheque through which premium was sought to be paid to the appellant was dishonoured by the bank when it was presented for encashment, there was a failure of consideration and as such no contract of insurance came into existence as between the insurer and the insured. It is also contended that under Section 64-VB of the Insurance Act, 1938, no risk would be assumed unless premium was received in advance. These contentions cannot be accepted. According to Clause (d) of Section 2 of the Contract Act, consideration is spoken of thus : "(d) When, at the desire of the promisor, the promisee or any other person had done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise." Similarly, Clauses (e) and (f) provide as under : "(e) Every promise and every set of promises, forming the consideration for each other, is an agreement. (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises." It is further provided by Clause (h) that an agreement enforceable by law is a contract. Now, a contract of insurance, like any other contract, is concluded by offer and acceptance. Normally, a liability under the contract of insurance would arise only on payment of premium if such payment was made a condition precedent to the Insurance Policy taking effect. But such a condition which is intended for the benefit of the insurer can be waived by the insurer as laid down in Abdul Azeez & Co. v. National Insurance Co. Ltd. AIR 1954 Madras 520 = AIR 1953 (2) Madras Law Journal 714, in which a decision of the Bombay High Court in Ocean Accident & Guarantee Corporation Company vs. Patkar AIR 1935 Bombay 236 was followed. To the same effect is an old decision in Equitable Fire & Accident Office vs. Ching Wo Hong 1907 AC

96. These are the principles relating to an ordinary contract of insurance, but the contract of insurance relating to motor vehicles has to be understood in the light of the various provisions contained in the Motor Vehicles Act, 1988. Chapter 11 of the Motor Vehicles Act deals with insurance of motor vehicles against third party risks. Section 146(1), inter alia, provides as under : "146. Necessity for insurance against third party risk. (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter." Section 147 (5) provides as under : "(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 casts a duty on the insurer to satisfy judgments and awards against persons insured in respect of third party risks. Sub-section (1) of Section 149 is quoted below : "149. Duty of insurers to satisfy judgments and awards against person insured in respect of third party risks -- (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 judgments." The contract of insurance in respect of motor vehicles has, therefore, to be construed in the light of the above provisions. Section 146(1) contains a prohibition on the use of the motor vehicles without an insurance policy having been taken in accordance with Chapter 11 of the Motor Vehicles Act. The manifest object of this provision is to ensure that third party, who suffers injuries due to the use of the motor vehicle, may be able to get damages from the owner of the vehicle and recoverability of the damages may not depend on the financial condition or solvency of the driver of the vehicle who had caused the injuries. Thus, any contract of insurance under Chapter 11 of the Motor Vehicles Act, 1988 contemplates a third party who is not a signatory or a party to the contract of insurance but is, nevertheless, protected by such contract. As pointed out by this Court in New Asiatic Insurance Co. Ltd. vs. Pessumal Dhanamal Aswani & Ors. AIR 1964 SC 1736, the rights of the third party to get indemnified can be exercised only against the insurer of the vehicle. It is thus clear that the third party is not concerned and does not come into the picture at all in the matter of payment of premium. Whether the premium has been paid or not is not the concern of the third party who is concerned with the fact that there was a policy issued in respect of the vehicle involved in the accident and it is on the basis of this policy that the claim can be maintained by the third party against the insurer. It was in the background of the above statutory provisions that the provisions of Section 64-VB, upon which reliance has been placed by learned counsel for the appellant, were considered by this Court in Oriental Insurance Co. Ltd. vs. Inderjit Kaur & Ors. (1998) 1 SCC 371, in which it was laid down as under : "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 without 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 indemnify 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." This decision, which is a 3-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the Insurance Policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the issuance of the Policy on the date on which the accident took place. If, on the date of accident, there was a Policy of Insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of Insurance Policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party. The above decision of this Court was relied upon by the High Court in negativing the contention raised by the appellant. The High Court, in the circumstances of the case, was fully justified in dismissing the appeals. We find no infirmity in the judgment of the High Court. Consequently, the appeals are dismissed. There will be no order as to costs.