

GAHC010055502024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/862/2024

DIPAK KOCH
S/O ROHINI KOCH,
RESIDENT OF VILLAGE KURSHAPAKHRI PT II
PS LAKHIPUR, GOALPARA, ASSAM, 783129

VERSUS

NATIONAL INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AT MIDDLETON STREET, KOLKATTA
AND ONE OF THE REGIONAL OFFICES KNOWN AS GUWAHATI REGIONAL
OFFICE AT GS ROAD, BHANGAGARH, GUWAHATI 05, ASSAM

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : MR. R K BHATRA

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

27.05.2024

Heard Mr. M.U. Mahmud, the learned counsel appearing for the applicant as well as Mr. R.K. Bhatra, the learned counsel representing the opposite party.

This application has been filed under the proviso to Section 173 of the Motor Vehicles Act, 1988 seeking a direction asking the appellant Insurance Company to deposit 50% of the awarded amount in respect of MAC Case No.146/2017 which was disposed of by the Tribunal at Goalpara on 09.11.2021.

The appellant Insurance Company has claimed that at the time of purchasing the Insurance Policy, the owner of the vehicle had handed over a cheque to the Insurance Company and the said cheque was subsequently dishonoured by the Bank. The Insurance Company has further claimed that because of dishonor of the cheque by the Bank, the Insurance Policy that was sold to the owner of the vehicle was cancelled.

The learned counsel Mr. Bhatra has submitted that under the aforesaid circumstances, it can be presumed that the owner of the vehicle did not have a valid Insurance Policy at the time of the accident.

Mr. Mahmud has submitted that the Tribunal has beautifully dealt with the aforesaid fact. According to Mr. Mahmud, the Tribunal has held that the Ext.C, the letter issued by the Insurance Company informing the owner of the vehicle about the dishonor of cheque, was never proved to have been served upon the owner. In order to buttress his point, Mr. Mahmud has relied upon a judgment of the Hon'ble Supreme Court that was delivered in *United India Insurance Company Limited vs. Laxmamma and Ors.*, reported in (2012) 5 SCC 234. Paragraph 26 of the said judgment is quoted 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 Sections 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."

I have considered the submissions made by the learned counsel of the parties.

This Court in *National Insurance Company Limited vs. Nishi Bala Roy*, reported in *MANU/GH/0288/2014* has held that without a valid proof of communication of cancellation of policy, the Insurance Company cannot avoid the claim of the third party. In the case in hand, there is evidence that the Insurance Company has written a letter informing the owner of the vehicle about the dishonor of the cheque given by him. But the Insurance Company has failed to prove that the said letter was received by the owner of the vehicle. Therefore, at this stage, it must be held that the owner of the vehicle did not have the knowledge that the cheque which he had given to the Insurance Company for purchasing an Insurance Policy was subsequently dishonoured.

For the aforesaid reasons, the prayer of the applicant is allowed. The Insurance Company is directed to deposit 50% of the awarded amount in the Registry of this Court within next 4(four) weeks. On deposit of the said money, the claimant shall be at liberty to withdraw the same without any riders.

It is further observed that if the appeal is ultimately decided in favour of the Insurance Company, then the appellant Insurance Company shall be at liberty to recover the money from the owner.

With the aforesaid direction, the Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant