IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 26th OF SEPTEMBER, 2024

MISC. APPEAL No. 3026 of 2005

UNITED INDIA INSURANCE CO.LTD.

Versus

BULLA AND OTHERS

Appearance:

Shri Vineet Kumar Pandey - Advocate for the appellant/Insurance company.

None for respondents No. 1 to 3 in spite of service.

ORDER

This appeal has been filed by the Insurance Company i.e. non-applicant No.3 in MACC No.36 of 2002 whereby learned First Additional Motor Accidental Claims Tribunal, Mandla in the case of Bulla vs. Suresh Dheemer and others vide award dated 21/06/2005 for the motor accident claim case in which accident took place on 19/05/2002 by offending vehicle bearing registration No,MP20 E-7731 causing injuries to the claimant has awarded compensation of Rs.89,260/- to the claimant and liability has been affixed on non-applicants No. 1 to 3.

2. Insurance company has come in this appeal on the ground that the Tribunal ignored the statement of Rameshwar Barmate, Administrative Officer of Insurance Company who stated in the Tribunal that on the date of accident vehicle was not insured as the premium of Rs.6917/- tendered through cheque No.545205 of Allahabad Bank was dishonoured by Bank for not having sufficient fund in the account, therefore on the date of accident

vehicle was not insured. Cover Note was cancelled by the Insurance Company and information given to the owner of the vehicle therefore, Insurance Company is not liable to pay any compensation.

3. This appeal was admitted for final hearing on 04/09/2009 when counsel for both the parties i.e. appellant and respondents No. 1 to 3 were present but at the time of hearing on 18/07/2024 none appeared on behalf of the respondents No.1 to 3.

4. On perusal of the record it is seen that officer for Insurance Company has made statement in the Tribunal wherein he has stated that cheque was dishonoured, therefore there is no valid insurance policy. He denied the fact that information of cancellation of insurance policy was not given to the owner/driver of the vehicle. He further submitted that vide Ex.D/2 information was given by the Bank on 26/12/2001 and it was received by the Insurance Company Officer on 31/12/2001. In the written statement filed by the Insurance Company on 27/02/2004 this plea has been specifically taken. Regarding the issue framed by the Tribunal in para-10, this issue has been considered. It is seen that accident has taken place on 19/05/2002 i.e. after cancellation of cheque.

5. Learned Tribunal has although held in Para-11 of the award that information was received by other party but in the light of various citation held that for third party liability in such situation under policy would remain but in the case of ***Daddappa and others vs. Branch Manager, National Insurance Co. Ltd, 2008 ACJ 581***, as relied by learned counsel for the appellant, the Hon'ble Supreme Court in para 9, 10, 14, 15, 22, 27 and 28 has

held thus :-

> **"9.** Before embarking on the said question we may notice the admitted facts. The second respondent who was driving the vehicle was also the owner thereof. The insurance policy was to remain valid for the period 17-10-1997 to 16-10-1998. Respondent 3 issued a cheque on 15-10-1997. The said cheque was presented for encashment before Syndicate Bank. The Bank by its letter dated 21-10-1997 issued a "return memo" disclosing dishonour of the cheque with the remarks "fund insufficient". The first respondent thereupon cancelled the policy of insurance. The said information was communicated to Respondent 2. An intimation thereabout was also given to RTO concerned.
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> **10.** Before the Motor Accidents Claims Tribunal, the insurer has also examined witnesses, inter alia, to prove cancellation of the policy of insurance, postal acknowledgement showing intimation thereabout which was served to the insured and a copy of the letter dated 6-11-1997 issued to RTO and the memo issued by the Bank as regards dishonour of the cheque, etc.
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> **14.** Section 64-VB of the 1938 Act provides that no risk is to be assumed unless premium is received in advance in the following terms:
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> "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 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.
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> 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.
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> (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 dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays."

15. The said provision, therefore, in no unmistakable term provides for issuance of a valid policy only on receipt of payment of the premium.

22. A contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedents for a valid contract. A contract furthermore must be for consideration.

27. A beneficial legislation as is well known should not be construed in such a manner so as to bring within its ambit a benefit which was not contemplated by the legislature to be given to the party. In Regional Director, ESI Corpn. v. Ramanuja Match Industries [(1985) 1 SCC 218 : 1985 SCC (L&S) 213 : AIR 1985 SC 278] this Court held : (SCC pp. 224-25, para 10)

"10. … We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme."

We, therefore, agree with the opinion of the High Court.

28. However, as the appellant hails from the lowest strata of society, we are of the opinion that in a case of this nature, we should, in exercise of our extraordinary jurisdiction under Article 142 of the Constitution of India, direct Respondent 1 to pay the amount of claim to the appellants herein and recover the same from the owner of the vehicle viz. Respondent 2, particularly in view of the fact that no appeal was preferred by him. We direct accordingly."

6. Therefore, In the light of the case **Daddappa and others (supra)**, the finding given by the Tribunal in para-11 cannot be sustained as in the said judgment, it has been clearly directed that even for a third party liability

which is not arising out of contract liability cannot be enforced.

7. In view of the aforesaid, the appeal filed by the insurance company is allowed and Insurance Company is exonerated from paying the compensation.

8. Let the compensation be paid by non-applicants No. 1 and 2 jointly and separately.

9. Accordingly, the appeal is allowed and disposed of.

(AVANINDRA KUMAR SINGH)
JUDGE

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