

CASE NO.:
Appeal (civil) 5285 of 2006

PETITIONER:
The New India Assurance Co. Ltd.

RESPONDENT:
Smt. Afroz Bi & Ors.

DATE OF JUDGMENT: 30/11/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising Out of S.L.P. (C) Nos.14587-88 of 2005)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in these appeals is to the orders passed by the Division Bench of the Madhya Pradesh High Court, Indore Bench in Miscellaneous Appeal No. 473 of 1997 which was disposed of on 14.7.2004 and MCC No. 597 of 2004 filed for reviewing the said order which was rejected by order dated 2.2.2005.

Background facts in a nutshell are as follows:

One Nisar Khan (hereinafter referred to as the 'deceased') met with an accident on 17.8.1992. The offending vehicle (No. MP-09-D-3815) was the subject matter of insurance with National Insurance Company Ltd. Policy of insurance issued by it covered the period from 5.10.1991 to 4.10.1992. Appellant issued insurance cover in respect of the vehicle covering the period from 7.11.1992 to 6.11.1993. A petition claiming compensation was filed before the IVth Additional Member, Motor Accidents Claims Tribunal, Dewas (in short the 'MACT'). The claim was lodged by the widow, three minor children and the mother of the deceased. In the claim petition the owner of the vehicle, the driver of the vehicle and the appellant Insurance Company were arrayed as the respondents. The MACT taking into account the evidence on record held that the owner of the vehicle and the driver were liable to pay the compensation fixed at Rs.1,20,000/- with interest. So far as the present dispute is concerned the quantum of award and the interest is really not relevant. The MACT took note of the fact that the offending vehicle was not the subject matter of insurance with the appellant-insurance company because the cheque which was issued to cover the premium had been dishonored and the policy had become inoperative. Copy of the insurance policy was annexed as Annexure P-1. It was therefore held that present appellant has no liability with regard to the accident as on the fateful day the vehicle was not the subject matter of insurance with it. The claimant preferred an appeal questioning the conclusions regarding absence of liability of the present

appellant. The High Court held that the quantum awarded was reasonable. It was, however, held that bouncing of cheque issued on a later date cannot take away liability of the insurer qua a third party. Accordingly the High Court allowed the appeal in part and held that the appellant-Insurance company was also liable along with owner and the driver in respect of the award.

A review application was filed. It was brought to the notice of the High Court that even if it is accepted for the sake of argument that bouncing of the cheque is not of any relevance, the liability cannot be fastened on the appellant as the cheque issued related to a subsequent period and the insurance cover as noted above was relatable to the period from 7.11.1992 to 6.11.1993 i.e. after the date of accident i.e. 17.8.1992. It is pointed out that during the said period, as the records show, the vehicle was the subject matter of insurance with National Insurance Company Ltd. which was not even arrayed as a party in the claim petition.

There is no appearance on behalf of the respondents in spite of service of notice.

In support of the appeals, learned counsel for the appellant submitted that the question involved is not the effect of bouncing of cheque and the real question is the period for which the insurance cover was issued.

It appears that the High Court has not taken note of the basic issue involved so far as the present appellant is concerned. Its specific stand was that even the cheque which was issued and subsequently dishonored related to the period from 7.11.1992 to 6.11.1993. The period obviously was subsequent to the date of accident. The copy of the cover note is annexed as Annexure P-2 to the Memorandum of Appeal before this Court and it clearly shows that the period covered was 7.11.1992 to 6.11.1993. This aspect was also highlighted in the review petition before the High Court. That being so, the High Court was required to examine the liability, if any, of the appellant-Insurance Company. In that factual background the question whether bouncing of the cheque subsequently affected the liability of the insurer was really not relevant for the purpose of the present case. Additionally, National Insurance Company Ltd. which is stated to be the insurer for the relevant period, during which the accident took place, was not pleaded as party before the MACT.

In the aforesaid background, the case is remitted to the High Court for fresh hearing and adjudication. If so felt desirable, the High Court may permit the claimants to implead the National Insurance Company Ltd. as respondent so that its stand can be taken note of.

The appeals are allowed to the aforesaid extent but in the circumstances without any order as to costs.