CASE NO.:
Appeal (civil) 5829 of 2007

PETITIONER:
Deddappa & Ors

RESPONDENT:
The Branch Manager, National Insurance Co. Ltd.

DATE OF JUDGMENT: 12/12/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5829 OF 2007
(Arising out of SLP (C) NO.7746 of 2006)

S.B. Sinha, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 15.6.2005 passed by a learned Single Judge of the High Court of Karnataka in M.F.A No.5751 of 2002, whereby and whereunder an appeal preferred by the respondent herein from the judgment and order dated 12.06.2002 passed by the Motor Accidents Claims Tribunal in M.C.A. No.113 of 2001 was allowed.

3. Shantamma, daughter of the appellant herein was sleeping in her hut. A tempo bearing No.KA 37 \026 2257 which was being rashly and negligently driven by Respondent No.2 herein ran over her. She died on the spot. Household articles of the appellant also were damaged in the said accident.

4. An application for grant of compensation was filed by the appellants herein under Section 166 of the Motor Vehicles Act, 1988 (for short "the Act") in the Court of C.J. (SD) & Motor Accidents Claims Tribunal at Gangavati in the district of Koppal on 12.06.2006.

5. The said vehicle was insured with the National Insurance Company. A plea was taken therein by the Insurance Company that although the vehicle in question was insured by the owner for the period 17.10.1997 and 16.10.1998, but the cheque issued therefor having been dishonoured, the policy was cancelled and, thus, it was not liable therefor.

6. By an Award dated 12.06.2002, the learned Motor Vehicles Accidents Claims Tribunal allowed the said claim application directing payment of compensation for a sum of Rs.1,58,000/- with interest @ 12% per annum holding that the Insurer was liable to pay the said awarded amount despite cancellation of the contract of insurance. As noticed hereinbefore the High Court of Karnataka on an appeal preferred by the first respondent herein allowed the same relying on the judgment of the Karnataka High Court in M.F.A. No.6430 of 2001.

7. Mr. C.M. Angadi, the learned counsel appearing on behalf of the appellant in support of this appeal inter alia submitted that the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that when the insurance cover was issued, the liability of the Insurance Company subsists despite dishonour of cheque evidencing payment of the insurance premium.

8. Strong reliance in this behalf has been placed on Oriental Insurance Co. Ltd. v. Inderjit Kaur and Ors. [(1998) 1 SCC 371] and National Insurance Co. Ltd. v. Seema Malhotra and Ors. [(2001) 3 SCC 151].

9. Before embarking on the said question we may notice the admitted facts. 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 No.3 issued a cheque on 15.10.1997. The said cheque was presented for encashment before the 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". First Respondent thereupon cancelled the policy of insurance. The said information was communicated to Respondent No.2. An intimation thereabout was also given to the R.T.O. concerned.

10. Before the Motor Vehicle 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 the R.T.O. and the memo issued by the Bank as regards dishonour of the cheque etc.

11. Indisputably, the accident had occurred on 6.2.1998 that is much after communication of cancellation of the policy.

12. Keeping in view the aforementioned backdrop of all events, we may notice the legal issues addressed before us by the learned counsel.

13. Section 147 of the Act obligates the owner of the motor vehicle to get the vehicle insured in so far as the claim of third party is concerned. The Act does not deal with contract of insurance as such. Contract of insurance is governed by the Insurance Act, 1938 (for short "the 1938 Act").

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:-

"Section 64VB - 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.

(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.

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 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 despatch 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.

16. The question came up for consideration before this Court in Inderjit Kaur (supra), wherein it was opined that a policy of insurance which is issued in public interest would prevail over the interest of the insurance company. In that case a bus met with an accident. The policy of insurance was issued on 30.11.1989. A letter stating that the cheque had been dishonoured was sent by the Insurance Company to the insurer on 23.1.1990. The premium was paid in cash on 2.5.1990. The accident took place 19.4.1990. Despite noticing Section 64-VB of the 1938 Act, but having regard to the underlying public policy behind the statutory scheme in respect of insurance as evidenced by Sections 147 and Section 149 of the Act and in particular having regard to the fact that policy of insurance to cover the bus without receiving the premium had already been issued, this Court held that the Insurance Company was liable to indemnify the insured.

17. We may, however, notice that in terms of sub-section (5) of Section 147 and sub-section (1) of Section 149 of the Act, the Insurance Company became liable to satisfy awards of compensation in respect thereof, notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued for payment of premium thereon had not been honoured.

18. The said question, however, was left open in Inderjit Kaur (supra).

19. The said decision proceeded on the basis that it was the Insurance Company which was responsible for placing itself in the said predicament as it had issued a policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64-VB of the 1938 Act. The public interest in a situation of that nature and applying the principle of estoppel, this Court held, would prevail over the interest of the Insurance Company.

20. The ratio of the said decision was, however, noticed by this Court in New India Assurance Co. Ltd. v. Rula and Ors. [(2000) 3 SCC 195]. It was held that ordinarily a liability under the contract of insurance would arise only on payment of premium, if such payment was made a condition precedent for taking effect of the insurance policy but such a condition which is intended for the benefit of the insurer can be waived by it.

It was opined:-

"\005If, 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 the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party".

The dicta laid down therein clarifies that if on the date of accident the policy subsists, then only the third party would be entitled to avail the benefit therof.

21. Almost an identical question again came up for consideration before this Court in National Insurance Co. Ltd. v. Seema Malhotra and Ors. [(2001) 3 SCC 151], a Division Bench noticed both the aforementioned decisions and analysed the same in the light of Section 64-VB of the 1938 Act. It was held :

"17. In a contract of insurance when the insured gives a cheque towards payment of premium or part of the premium, such a contract consists of reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on

presentation, would yield the amount in cash. It cannot be forgotten that a cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.

18. Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation.

19. Under Section 25 of the Contract Act an agreement made without consideration is void. Section 65 of the Contract Act says that when a contract becomes void any person who has received any advantage under such contract is bound to restore it to the person from whom he received it. So, even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured, the insurer is entitled to get the money back.

20. However, if the insured makes up the premium even after the cheque was dishonoured but before the date of accident it would be a different case as payment of consideration can be treated as paid in the order in which the nature of transaction required it. As such an event did not happen in this case, the Insurance Company is legally justified in refusing to pay the amount claimed by the respondents".

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.

23. In today's world payment made by cheque is ordinarily accepted as valid tender. Section 64VB of the 1938 Act also provides for such a scheme.

24. Payment by cheque, however, is subject to its encashment. In Damadilal & Ors. v. Parashram & Ors. [(1976) 4 SCC 855], this Court observed :

"On the ground of default, it is not disputed that the defendants tendered the amount in arrears by cheque within the prescribed time. The question is whether this was a lawful tender. It is well-established that a cheque sent in payment of a debt on the request of the creditor, unless dishonoured, operates as valid discharge of the debt and, if the cheque was sent by post and was met on presentation, the date of payment is the date when the cheque was posted..."

25. Recently again in New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya and Anr. [(2006) 5 SCC 192], although in the context of the Workmen Compensation Act, 1923, Balasubramanyan, J opined :

"It is not brought to our notice that there is any other law enacted which stands in the way of an

insurance company and the insured entering into a contract confining the obligation of the insurance company to indemnify to a particular head or to a particular amount when it relates to a claim for compensation to a third party arising under the Workmen's Compensation Act. In this situation, the obligation of the insurance company clearly stands limited and the relevant proviso providing for exclusion of liability for interest or penalty has to be given effect to. Unlike the scheme of the Motor Vehicles Act the Workmen's Compensation Act does not confer a right on the claimant for compensation under that Act to claim the payment of compensation in its entirety from the insurer himself".

It was further observed:-
"The law relating to contracts of insurance is part of the general law of contract. So said Roskill, L.J. in Cehave v. Bremer. This view was approved by Lord Wilberforce in Reardon Smith v. Hansen-Tangen (All ER p. 576 h ) wherein he said:

"It is desirable that the same legal principles should apply to the law of contract as a whole and that different legal principles should not apply to different branches of that law."

A contract of insurance is to be construed in the first place from the terms used in it, which terms are themselves to be understood in their primary, natural, ordinary and popular sense. (See Colinvaux's Law of Insurance , 7th Edn., para 2-01.) A policy of insurance has therefore to be construed like any other contract. On a construction of the contract in question it is clear that the insurer had not undertaken the liability for interest and penalty, but had undertaken to indemnify the employer only to reimburse the compensation the employer was liable to pay among other things under the Workmen's Compensation Act. Unless one is in a position to void the exclusion clause concerning liability for interest and penalty imposed on the insured on account of his failure to comply with the requirements of the Workmen's Compensation Act of 1923, the insurer cannot be made liable to the insured for those amounts.""

26. We are not oblivious of the distinction between the statutory liability of the Insurance Company vis-'-vis a third party in the context of Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the insurance company would not be liable to satisfy the claim.

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, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries [AIR 1985 SC 278], this Court held :
"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 extra-ordinary jurisdiction under Article 142 of the Constitution of India, direct the Respondent No.1 to pay the amount of claim to the appellants herein and recover the same from the owner of the vehicle viz., Respondent No.2, particularly in view of the fact that no appeal was preferred by him. We direct accordingly.

29. We, therefore, allow the appeal with the aforementioned directions. In the facts and circumstances of the case, however, there shall be no order as to costs.