



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.3105 OF 2013
WITH
CIVIL APPLICATION NO.15622 OF 2013
IN
FIRST APPEAL NO.3105 OF 2013**

The New India Assurance Co. Ltd.,
Through its Divisional Manager,
D.O. No. I, Adalat Road, Aurangabad,
Shri. Sanjiv Ramrao Gaisamudre,
Age 52 years, Occu: Service,
R/o Aurangabad

..Appellant
(Orig. Respondent No.2)

Versus

1. Sow. Shantabai w/o Bhausahab Bidve,
Age 47 Years, Occu: Household,
R/o Machindranath Chincholi,
Tq. Ghansawngi Dist Jalna

2. Bhausahab s/o Ganpatrao Bidve,
Age 52 Years, Occu: Agriculture,
R/o Machindranath Chincholi,
Tq. Ghansawngi Dist. Jalna

..Respondents
(Orig. Claimants)

3. M/s. Meena Roadlines Pvt. Ltd.,
Plot No.87, Vayurpuri, Sainikpuri,
Secunderabad 500094,
Hyderabad (A.P.)

..Respondent
(Orig. Respondent No.1)

...

Mr. M. M. Ambhore, Advocate for the Appellant.

Mr. S. P. Katneshwarkar, Advocate for Respondent Nos.1 and 2.

...
CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 18th APRIL, 2024.

PRONOUNCED ON : 06th MAY, 2024.

JUDGMENT:-

1. The appellant/Insurer impugns the judgment and award dated 11.11.2013 passed by the Motor Accident Claim Tribunal, Jalna in M.A.C.P. No.16/2011.

2. With the consent of the parties, matter is taken up for final hearing.

3. Mr. Ambhore, learned Advocate appearing for the appellant submits that respondent nos.1 and 2/original claimants had instituted claim for compensation of Rs.7,00,000/- under Section 166 of the Motor Vehicle Act against the owner and insurer of the tanker bearing Registration No.HP-47-3804 alleging accidental death of their son Chandu due to rash and negligent driving of the said vehicle. The Tribunal passed an award in favour of the claimants for compensation of Rs.4,45,500/- alongwith interest at the rate of 7.5% p.a. holding the respondents jointly and severally to pay the compensation. Mr. Ambhore, learned Advocate further submits that on the date of accident i.e. on 28.09.2010 the policy in respect of the vehicle in question had been cancelled by the Insurer and communication was made to the insured as well as RTO by Registered Post. As such, the insurance policy was not in subsistence as on the date of the accident. In support of his contentions, he has placed on record the copies of the communication alleged to have been issued to transport authority by the Registered Post. He would, therefore, submit that the Tribunal ought to have exonerated the Insurer.

4. Mr. Katneshwarkar, learned Advocate appearing for respondent nos.1 and 2/original claimants submits that plea regarding cancellation of the policy is first time raised before this Court. By inviting attention of this Court to the pleadings in the written statement, he submits that the vague plea is taken that policy was not in subsistence. No particulars of such cancellation or communication made to the insured have been pleaded. He would further submit that insurer had not recorded any evidence to

substantiate such defence before the Tribunal. Consequently, such plea cannot be entertained at appellate stage.

5. Having considered submissions advanced, the core issue that requires consideration in this appeal is as to whether the insurance policy issued by the appellant was in subsistence as on the date of accident and whether so called cancellation of the policy is duly proved before the Tribunal, so as to exonerate the insurer. It is not in dispute that the insurance policy was issued for the period from 30.05.2010 to 29.05.2011 in relation of the offending vehicle. Copy of such policy is placed at Exhibit-35 on the record of the Tribunal. The claimants are coming with the case that the offending vehicle was duly insured as on the date of accident. The appellant-insurer filed written statement at Exhibit-26 stating that the policy in respect of the offending vehicle was cancelled as the cheque of the policy premium was dishonoured. Consequently, insurance contract was not in force as on the date of the accident. Pertinently, no evidence is brought on record in support of such contentions before the Tribunal. It was obligatory on the part of the Insurer to place on record the documents indicating that the insurance policy was issued as against the payment of the premium through cheque. Such cheque was presented to the bank for realization and it was dishonoured. Pursuant to dishonour of such cheque, the insurance policy was cancelled and notice of such cancellation was duly communication to the insured.

6. In the present case, no witness is examined on behalf of the insurer. No documentary evidence is tendered into service. Mr. Ambhore, learned Advocate appearing for the appellant endeavours to contend that the copy of communication made to the transport authority is filed alongwith appeal memo. However, such

document is not tendered alongwith application seeking permission to lead additional evidence. Further, the copy of the dishonoured cheque or copy of communication made to the owner of the vehicle or the copies of the acknowledgement regarding service of such communication to the insured are not brought on record. The Supreme Court in case of ***Deddappa Vs. Branch Manager, National Insurance Co. Ltd.***¹ observed that if the policy is cancelled owing to dishonour of cheque and the communication in this regard is made to the insured before accident, the policy would stand abrogated and insurer would be entitled to avoid liability. However, in absence of service of communication to insured regarding cancellation of the policy prior to the accident, the defence of the Insurer cannot be accepted. No fault can be found in the order passed by the Tribunal.

7. Resultantly, Appeal stands dismissed with cost.

8. The amount, if any, deposited in this Appeal be released in favour of the claimants.

9. In view of dismissal of First Appeal, pending Civil Application stands disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/May-2024

¹ AIR 2008 SC 767.