

## Can Insurance Company Recover The Compensation From Insured If The Cheque Towards Premium Dishonoured?

written by Richa K Gaurav | May 7, 2019

The Aurangabad Bench of Hon'ble High Court of Bombay in its judgement dated 15<sup>th</sup> April, 2019 in the matter of '*SBI Insurance Company Versus Madhubala & Anr.*<sup>[1]</sup>' has held that in case the cheque towards premium gets dishonoured; the Insurance Company is not liable to indemnify the owner of the offending vehicle (insured) as the same amounts to '*breach of promise*' under the insurance agreement. Can Insurance Company Recover Compensation From Insured? Facts:

On 19<sup>th</sup> November, 2015 the deceased was riding his motorcycle when the offending private bus driving from the wrong side of the road, hit him resulting into his death. The deceased was a carpenter by profession earning Rs. 400/- per day and was the sole bread-earner of the family. Therefore, the dependents of the deceased (claimants) filed claim petition under section 166 of Motor Vehicles Act, 1988 ("MV Act") against the owner, driver and insurer of the offending bus.

The claim petition was not resisted by the owner and driver of the offending vehicle but the insurer of the offending bus denied its liability to pay the compensation on the ground that insurance policies of the offending bus were cancelled as the cheque issued towards the premium of the policies of insurance got dishonoured. The defence of contributory negligence was also pleaded.

The Learned Motor Accident Claims Tribunal, Latur in MACP No. 307/2015 vide its order dated 7<sup>th</sup> March, 2018 awarded compensation of Rs.11,93,200/- to the claimants and joint and several liability was saddled on the owner, driver and insurer of the offending bus.

Aggrieved by the orders of the Learned Tribunal, the insurer namely SBI Insurance Company Ltd. ("Insurance Company") preferred First Appeal before the Hon'ble Bombay High Court challenging the award only on the ground that "because the policies of insurance issued by the insurer of the offending vehicle were cancelled by the Insurance Company after the occurrence of the incident on account of bouncing of the cheques issued towards the premium, the Insurance Company is not liable to indemnify the owner of the offending vehicle. Therefore, the Insurance Company has right to recover the compensation from the owner of the offending vehicle, paid to claimants, towards the satisfaction of the award passed by the Tribunal"<sup>[2]</sup>

Issues - Can Insurance Company Recover Compensation From Insured?

1. The Hon'ble High Court considered the following Question of Law:
2. Whether the Insurance Company has right to recover the compensation amount paid to

claimants towards satisfaction of the award passed by the Tribunal from the insured (owner of the offending vehicle), if the cheque towards premium got dishonoured?

Submissions:

Learned

counsel appearing on behalf of the Appellant Insurance Company submitted that the Insurance policy were issued on 10<sup>th</sup> November, 2015 valid and effective from the said date. However, the cheque towards premium of insurance

policy issued by the owner of the offending vehicle involved in the accident got dishonoured on account of insufficiency of funds. Resultantly, the Insurance Company cancelled the insurance policy and issued notice on 14<sup>th</sup> December, 2015 to the owner of the offending vehicle and R.T.O to that effect.

He further contended that as the insurance policy was cancelled and the owner of the offending vehicle was duly intimated; the contract of insurance between

the Insurance Company and owner of the offending vehicle stood terminated, therefore, the Insurance Company is not liable to indemnify the owner of the offending vehicle and has right to recover the compensation amount paid to the

claimants by the Insurance Company from the owner of the offending vehicle. However, at the time of arguments the defence of contributory negligence was waived

off by the Learned counsel.

On

the contrary Learned counsel for the owner of the offending vehicle submitted that on the date of the accident neither the policy of the insurance was terminated nor the cheque issued towards the premium was dishonoured not even the factum of termination/cancellation of the policy of insurance was conveyed

to the owner of the offending vehicle, in fact on the date of accident the policy of insurance was subsisting as the same was valid and effective.

Resultantly, it was contended that Insurance Company is bound to indemnify the owner

of the offending vehicle as well as the third party and has no right to recover

the same from the owner of the offending vehicle.

Judgment - Can Insurance Company Recover Compensation From Insured?

The

Hon'ble High Court held that liability of the authorised insurer to indemnify the third party in respect of the liability covered under the policy subsists when the policy of insurance has been issued on receipt of cheque towards the payment of premium even when the cheque gets dishonoured and the Insurance Company

has to satisfy the award in light of provisions of Section 147(5) and 149(1) of

the MV Act unless the insurance policy is cancelled by the authorised insurer and insured has been informed about the same before accident.

The

Hon'ble Bench laid reliance on "Oriental

Insurance Co. Ltd. versus Inderjeet Kaur”<sup>[3]</sup>—

wherein the apex court held that once a certificate of insurance is issued, the Insurance Company would not be absolved of its obligation to third parties.

Reliance

was also placed on “United India

Insurance Company Limited Versus Laxmamma and others”<sup>[4]</sup>—

in which the Hon’ble Supreme Court was pleased to confirm the award against the Insurance Company regarding its liability to pay the compensation to the third party claimants. However, gave liberty to the insurer to prosecute its remedy to recover from the insured the compensation amount paid to the claimants.

The

Hon’ble Bench further held that the Hon’ble Supreme Court of India has evolved

the doctrine of ‘public interest’ by virtue of which the Insurance Company was

liable to indemnify the third party in respect of liability covered under policy despite bar of Section 64-VB of the Insurance Act, 1983 that states no risk is to be assumed unless premium is received.

The

Hon’ble Bench further held that contract of insurance is based on reciprocal promises and on account of dishonoured cheque towards premium leads to breach of promise as a result the insurer was liable to pay compensation to the third

party but has right to recover the paid amount from owner of the offending vehicle.

Conclusion:

So the answer to Can Insurance Company Recover Compensation From Insured? would include the fact that ‘reciprocal promise’ is the fundamentality of the contract of insurance wherein the insured promises to pay the consideration (premium) for contract of indemnity in lieu of promise to indemnify in case of liability. Failure to pay premium resultantly leads to breach of promise consequently, the insured waives its right to be indemnified. However, the Insurance Company is bound to discharge its statutory liability to indemnify the third party claimants as it is not privy to the insurance contract.

In

the final analysis, it can be rightly concluded that the Hon’ble High Court has

harmoniously balanced the essence of Motor Vehicles Act, 1988 and Insurance Act, 1938 protecting ‘public interest’ as well as the interests of the Insurance Company to rightfully recover the compensation amount if the insurer

fails to comply with its part of the responsibility of paying the premium.

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[1] First

Appeal No. 1839 of 2018

[2]

Para 5; ‘SBI Insurance Company Versus Madhubala & Anr. First Appeal No. 1839 of 2018’ adjudicated by The High Court of Judicature at Bombay, Bench at Aurangabad.

[3]

(1998) 1 SCC 71

[4] (2012) 5 SCC 234

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