2025 INSC 951

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9854/2016

NATIONAL INSURANCE COMPANY LIMITED ...Appellant(s)

VERSUS

SUNITA DEVI & ORS. ....Respondent(s)

JUDGMENT

N.V. ANJARIA, J.

The present is an appeal preferred by the Insurance Company, which is directed against judgement and order dated 02.05.2016 passed in Motor Accident Claims Appeal No. 451 of 2007, by the High Court of Delhi, dismissing the appeal of the appellant herein and confirming the judgment and award dated 20th April, 2007 passed by Motor Accident Claims Tribunal, Delhi in Suit No. 64 of 2006.

2. In an accident occurred on 22nd August 2005 at about 3.30 p.m., one Dheeraj Singh died. He was driving motorcycle bearing No. HR-60 4688 along with a pillion rider. The motorcycle was hit from behind by the speeding truck bearing registration No. HR 46

A 1020 - offending vehicle. The deceased fell down on the road and was ran over by the offending vehicle.

2.1 The Motor Accident Claims Tribunal taking into account the relevant aspects including that the deceased was 36 years old, that he had been serving as Computer Engineer in a private company and found to be earning ₹ 3,364/- per month, taking the multiplier to be 17 awarded total compensation of ₹8,23,000/- under different heads.

2.2 The defence of the appellant-Insurance Company before the Tribunal as well as before the High Court was that the policy of insurance issued in relation to the offending vehicle was cancelled by it, about which the owner and the Regional Transport Officer were informed. It was contended that as the policy stood cancelled and it did not subsist on the date of accident, the appellant-insurer could not have been fastened with the liability of payment of compensation.

3. The Tribunal in its judgment recorded the finding that it was the driver who was rash and negligent in driving to be solely responsible for causing the accident. The Tribunal further concluded that the insurance policy stood cancelled on account of non-payment of the premium and resultantly the insurer was not

liable. However, the Tribunal directed the appellant-insurance company-original Respondent No. 3 to pay the compensation in the first instance and accorded it the right to recover the amount from Respondent No. 2-Owner. The High Court was of the view that no ground existed to interfere with the judgment and award of the Tribunal, consequently, dismissed the appeal as meritless.

3.1 Focusing on the only aspect to be addressed in this Appeal about the cancellation of the insurance policy and on that count disowning by the appellant of its liability for payment of compensation, the evidence as appreciated and recorded by the Tribunal go to show that the cheque towards the premium which was sought to be paid in respect of the insurance policy (Ex. R3W1/5) had bounced on the ground of insufficiency of funds. This factum was reflected in evidence through memo (R3W1/6). Witness (R3W1) deposed that the company had sent communication by the Company (Ex. R3W1/7) cancelling the insurance policy.

3.2 The insurance policy was on record in form of (Ex. R3W1/5) and also placed on record was the registered receipt thereof (Ex. R3W1/8). It was deposed that the Insurance Company had also intimated the said fact about the cancellation of the policy to the

RTO, which communication was also on record. The Tribunal in terms recorded that the testimony of witness appellant-Insurance Company (R3W1) was not controverted and could not be demolished. The High Court also accepted the said position to dismiss the appeal.

4. Emphasising the aforesaid finding on record that the cheque was dishonoured and the intimation was given by the appellant-company, learned Advocate, Mr. Amit Kumar Singh, appearing for the appellant submitted by relying on the decision of this Court in **National Insurance Company Ltd. vs. Seema Malhotra [(2001) 3 SCC 151]**, that when the insured had failed to pay the premium promised and the cheque towards the premium returned dishonoured by the bank, the insurer was not liable to perform its part of promise.

4.1 Learned advocate for the appellant proceeded to press into service other two decisions on the line, in **Deddappa & Ors. vs. Branch Manager, National Insurance Company Limited, [(2008) 2 SCC 595]** and **United India Insurance Company Limited vs. Laxmamma & Ors. [(2012) 5 SCC 234]**, to submit that when the position was clearly obtained that the premium was not paid and the communication was sent in that regard to the

concerned parties, the Tribunal and the High Court, both committed an error in directing the appellant-company to pay the amount of compensation to the claimants although to permit the appellant to subsequently recover from the owner. It was submitted that the Appellant-Insurance Company was required to be entirely exempted from the liability to deposit or pay.

4.2 On the other hand, learned advocate-on-record for the claimants, Mr. Sudhir Naagar, submitted that the judgment and award by the Tribunal and upholding thereof by the High Court requiring payment of compensation to the claimants by the Insurance Company was just and proper and that such direction was in the nature of doing justice. He submitted that the Insurance Company has already deposited 50% of the awarded compensation along with interest and that the claimants have withdrawn the same.

5. In **Deddappa (supra)** this Court addressed very point interpretating the provisions of Section 147(5), 149(1) and 166 of the Motor Vehicles Act, 1988 in relation to the liability of the insurance company vis-à-vis the third party in the eventuality of rescindment of the insurance contract on account of non-payment of premium because of bouncing of the cheque issued towards

premium amount. In that case, the cheque dated 15.10.1997 was dishonoured on 21.10.1995 due to insufficient funds, upon which the respondent-Insurance Company cancelled the policy and informed the vehicle owner as well as the RTO.

5.1 This Court held that the contract of insurance stood rescinded due to failure of consideration and intimation to that effect given to the parties concerned. However, the Court in exercise of its jurisdiction under Article 142 of the Constitution, directed the insurance company to compensate the appellant and to recover amount from the vehicle owner.

5.2 The subsequent judgment in **United India Insurance Company Limited & Ors. (supra),** laid down the very principle that the statutory liability of the insurer to indemnify the third parties would subsist unless the insurance policy was cancelled and the intimation of such cancelation had reached the insured before the accident. In this judgement also, this Court reiterated the “pay and recovery” principle.

5.3 Adverting to the facts of the present case, it is to be noticed that the accident took place on 22.08.2025. The cheque towards premium was dishonoured and intimation was given vide letter dated 04.05.2005. Therefore, there was a gap of more than three

months from the date when the insurance policy was liable to be treated as cancelled and the date when the accident took place.

5.4 The High Court in its judgment, while confirming the judgment and award of the Claims Tribunal, appears to have taken the view that the insurer having admittedly issued the insurance police against third party risk, the rights of third party would not get affected when the policy was issued and in that light the insurer must satisfy the award in favour of the third party, by protecting the rights of the insurer to allow it the right of recovery.

5.5 From the facts on record and more particularly in view of the decisions of this Court in **Deddappa (supra)** and **United India Insurance Company Ltd. (supra)** it could be immediately seen that even as this Court has underscored the proposition that cancellation of insurance policy issued in favour of the third party for covering third party risk, because of bouncing of cheque for premium or non-payment of premium, would in law, absolve the insurer from liability to pay the compensation, once the insurer has intimated the cancellation to the parties concerned, in the final directions issued, the Court thought it fit to direct the insurance company to make payment of compensation to the claimants and thereafter to permit it to recover the same.

5.6 It is to be noted at this stage that pursuant to order dated 27.07.2007 passed by the court in the present proceedings, the appellant-Insurance Company has already deposited one-half of the total awarded compensation with interest and that the claimants have withdrawn the said amount.

5.7 Depositing of the compensation amount by the Insurance Company as above could be well said to be conforming the law laid down by this Court in **Deddappa (supra)** and in **United India Insurance Company (supra)**. The Insurance Company has deposited the 50% amount of compensation with interest as awarded, the same is also released and the respondent-claimants have received them, in larger interest of justice to all parties, no recovery deserves to be permitted for the said amount deposited and withdrawn from the claimants. It would be not only harsh but would amount to setting the clock back.

6. In the totality of the operative facts, this Court is of the view that 50% amount which is already paid to the claimants need not be touched. Therefore, it is provided that there shall be no recovery from the claimants in respect of the said ½ part of compensation. The appellant – Insurance Company, however, shall be at liberty to recover the said 50% amount along with interest deposited by it

as above and received by the claimants as above, from the owner of the offending vehicle in accordance with law. As far as the balance of 50% amount along with interest is concerned, which remains, the claimants shall be entitled to recover the same from the owner of the offending vehicle in accordance with law.

7. This appeal is disposed of in the aforesaid terms.

..... J.
K. VINOD CHANDRAN

..... J.
N.V. ANJARIA

NEW DELHI;
August 08, 2025