IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 2216 of 2016

With

CAN/2/2015 (Old No. CAN/4322/2015)

Smt. Santi Roy & Ors.

VERSUS

National Insurance Company & Ors.

With

F.M.A.T. 931 of 2014

With

CAN/1/2015 (Old No. CAN/8452/2014)

CAN/2/2014 (Old No. CAN/8453/2014)

CAN/3/2015 (Old No. CAN/4314/2015)

CAN/4/2017 (Old No. CAN/5456/2017)

Bajaj Allianz General Insurance Co. Ltd.

VERSUS

Smt. Santi Roy & Ors.

For the appellants/claimants in FMA 2216 of 2016:	**Mr. Krishanu Banik, Adv.** **Mr. Tathagata Banik, Adv.**
For the respondent no.1 in FMA 2216 of 2016:	**Mr. P. K. Pahari, Adv.**
For the respondent no.2 in FMA 2216 of 2016:	**Mr. Rajesh Singh, Adv.**

For the appellant in FMAT 931/2014:

Mr. Rajesh Sing, Adv.

For the respondent nos. 2, 3 & 4 in FMAT 931 of 2014:

Mr. Krishanu Banik, Adv.

Mr. Tathagata Banik, Adv.

For the respondent no.7 in FMAT 931 of 2014:

Mr. P.K. Pahari, Adv.

Last Heard on: July 29, 2026

Judgment on: August 11, 2026

Biswaroop Chowdhury, J:

The instant appeals were heard analogously for their interconnectiveness. The said appeals were preferred by the appellants against Judgment and Award dated 11/04/2014 passed by Learned Additional District Judge 3rd Court Balurghat Dakshin Dinajpur in MACC-24/2009.

The case of the claimants before Learned Trial Judge may be summed up thus: On 15/09/2008 at about 5.30 hours the victim Shyamal Kumar Roy along with her wife Anjali Roy were proceeding by a motor cycle bearing No. WB-01-T-3033 from Salt Lake Police Abasan Flat 1/5 Sector 11/Kolkata-106 towards Khanna Hat. When they reached in front of 186 Aurobindo Sarani at that time the accused driver of truck no. WB-15A-5233 (Truck) was proceeding along Aurobindo Sarani from West to East and at same time one truck bearing no. WB-31-2876 (Truck) was proceeding along Raja Dinendra street from north to South with a common intention to overtake being driven in rash and negligent manner at the crossing of RD street and Aurabindo Sarani and followed the colliding lorry no. WB-15A-5233 knocked down the motor cycle WB-01T-3033 in front of 186 Arabindo Sarani as a result both the rider of the motor cycle namely Shymal Kumar Roy and pillion rider his wife sustained severe injuries and they were taken to R.G. Kar Hospital where both of them declared brought dead.

Due to rash and negligent driving by both the drivers of the offending truck the accident took place and both the drivers were wholly responsible for this accident.

Pursuant to the filing of the case notice was issued upon the opposite parties. Opposite parties vehicle owners did not contest the case. However the opposite party, National Insurance Company Limited, and Bajaj Allianz General Insurance Company Limited contested the case by filing written statements: ISSUES were framed and evidence was adduced. Learned Trial Judge upon considering the evidence adduced and hearing the Learned Advocates was pleased to dispose the claim case by observing and directing as follows:-

'Hence it is ORDERED that the instant MAC Case No. 24 of 2009 be and the same is allowed on contest against the Opposite Parties National Insurance Company Limited and Bajaj Allianz General Insurance Company Ltd. and ex-parte against OP owners.

The claimants/petitioners do hereby get an award of Rs. 11,16,676/- only against the opposite parties, National Insurance Company and Bajaj Allianz Insurance Company Limited under Section 166 of MV Act.

Accordingly both the Insurance Companies are hereby directed to pay the equal share of compensation amount to the claimants in equal shares by way of A/C payee cheques to this tribunal within two months hereof, failing which the entire amount of compensation shall carry simple interest @9% p.a. from the date of order till its realization in full.'

The claimants being aggrieved by the quantum of compensation awarded by the Learned Trial Court has come up with the Appeal FMA-2216/2016. On the other hand Bajaj Allianz General Insurance Co. Ltd. challenging the Judgment and Award passed by Learned Trial Judge preferred Appeal being FMAT-931 of 2014.

The ground of challenge by the claimants in FMA-2216/2016 is that Learned Trial Judge erred in considering the monthly salary of the victim Shyamal Roy as Rs. 10694 and not as Rs. 10,714/-. Secondly the Learned Trial Judge erred in not awarding future prospect at 30% and thirdly the Learned Trial Judge erred in awarding General damages Rs. 4500/- instant of Rs. 84,000/-.

The ground of challenge by Bajaj Allianz General Insurance Company Limited is that the Learned Trial Judge erred in not granting liberty to the

Insurance Company to recover the compensation from the vehicle owner WB-31/2876 although cheque issued by the vehicle owner was dishonoured.

Heard Learned Advocates for the parties. Perused the evidence adduced and materials on record.

Upon hearing the learned Advocates and upon perusing the evidence adduced this Court is of the view that monthly income of the victim upon deduction of profession tax as reflected in Pay Slip comes to Rs. 10,714 and by adding future prospect of 30% and adding general damages of Rs. 70,000/- the total compensation should be enhanced.

In the event monthly income after deduction of profession tax comes to Rs. 10,714/- the annual income comes to Rs. 1,28,568/-. Future prospect 30% being added Net annual income comes to Rs. 1,67,138.40/- 1/3rd deduction on account of personal expenses annual dependency loss comes to Rs. 1,11,425.60/-. By applying the multiplier of 13, total dependency loss comes to Rs. 14,48,532.80/-. Further general damages of Rs. 70,000/- should be added. Thus total compensation comes to Rs. 15,18,532.80/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 15,00,000/- is just and reasonable. Thus the claimants are entitled to Rs. 7,50,000/- each from National Insurance Company Ltd. and Bajaj Allianz Insurance Company Ltd. along with interest @6% p.a. from date of filing claim case till today.

Now with regard to right of recovery by Bajaj Allianz General Insurance Co. Ltd on the ground of dishonour of premium cheques it is necessary to consider some judicial decisions. In the case of Sova Dey and Ors. VS National Insurance Company Ltd. and Anr. (FMA 1442 of 2014) reported in 2026 (3) TAC-269 (Cal.) it was observed as follows:-

'In the case of Oriental Insurance Co. Ltd. VS Inderjit Kaur (supra) where the notice of dishonour of cheque was issued prior to accident, and subsequently premium was paid the Hon'ble Supreme Court upon discussing the provisions contained in Chapter 11 of the Motor Vehicles Act 1988 was pleased to observe as follows:

'Chapter 11 of the Motor Vehicles Act, 1988, provides for the insurance of motor vehicles against third party risks. Section 146 thereunder states that no person shall use or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle a policy of insurance that complies with the requirements of the Chapter. Section 147 sets out the requirements of policies and the limits of liability. A policy of insurance, by reason of this provision, must be a policy which is issued by a person who is an authorised insurer. Sub-section 5 reads thus:

"(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those

classes of persons." Section 149 refers to the duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. Subsection (1) thereof reads thus:

"(1) if, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) (or under the provisions of section 163A) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgment. "We have, therefore, this position. Despite the bar created by Section 64-VB of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus with out receiving the premium therefor. By reason of the provisions of Section 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to identify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to

avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured.

We may note in this connection the following message in the case of Montreal Street Railway Company VS. Normandin, A.I.R. 1917 Privy Council 142;

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.' It must also be noted that is was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64-VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant.'

In the case of United India Insurance Co. Ltd VS Laxmamma and ors. (supra) where the information of dishonour of cheque was given after the accident by the Insurer to the insured the Hon'ble Supreme Court observed as follows:

'19. *In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.*

20. *Having regard to the above legal position, insofar as facts of the present case are concerned, the owner of the bus obtained policy of insurance from the insurer for the period April 16, 2004 to April 15, 2005 for which* *premium was paid through cheque on April 14, 2004. The accident occurred on May 11, 2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated May 13, 2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on May 21, 2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy award of compensation passed in favour of the claimants.'*

In the case of National Insurance Co. Ltd. VS Balkar Ram and Ors. (supra) the Hon'ble Supreme Court upon considering the decision of United India Insurance Co. Ltd. VS Laxmamma and Ors. (supra) observed as follows:

'The Appellant/Insurance Company assailed the award passed by the Tribunal essentially on the ground that the cover note for the Policy of insurance was issued on 07-04-2000 for which a cheque was submitted by the owner. However the cheque was dishonoured by the bank on 17-04-2000 subsequently the vehicle which was insured with the appellant-insurance company met with an accident on 19-04-2000. The appellant-insurance Company, therefore contended that as the policy of insurance could not be held to be a valid document in view of the fact that the cheque towards the policy had been dishonoured even before the accident had taken place the insurance company was not liable to indemnify the claimants by paying the amount which fell into its share as per the Tribunal's award and it is the owner which is liable to pay the entire amount of compensation to the respondents/claimants.

However we compliment M.S. Kiran Suri, Learned Counsel for the appellant for cutting short the controversy by fairly pointing out the ratio of the judgment (2012) 5 SCC-234 titled United India Insurance Co. Ltd. VS Laxmanna and ors. wherein it has been held that the insurance company is liable to satisfy the award if the intimation regarding the dishonour of the cheque and cancellation of policy is communicated to the policy-holder after the date of the accident. Thus the defence of the insurance company that the policy of insurance was not valid since the cheque had been dishonoured prior to the accident on 17-04-2000 the intimation to the policy – holder had been given by the insurance company on 26-04-2000 in view of which the insurance Company cannot be allowed to contend that the Policy-holder was not holding a valid policy of insurance in regard to the vehicle which met with an accident. Admittedly the policy-holder had already issued another cheque substituting the cheque which had earlier been dishonoured.

In that view of the matter and following the ratio of the judgment referred to hereinabove this appeal has no substance and accordingly it is dismissed. No order as to costs.

In the case of National Insurance Co. Ltd. VS Abhaysingh Pratap Sing Waghela (supra) where the insurance policy was cancelled only after accident took place the Hon'ble Supreme Court observed as follows:

16. *"Indisputably, the first respondent is a third party in relation to the contract of insurance which had been entered into by and between the appellant* *and the owner of the vehicle in question. We have noticed hereinbefore that a document was produced before the Tribunal. Even according to the appellant, although it was only a Motor Input Advice cum Receipt, it contained the Cover Note No. 279106. We, therefore, have to suppose that a Cover Note had, in fact, been issued. If a Cover Note had been issued which in terms of clause (b) of sub-Section 1 of Section 145 of the Act would come within the purview of definition of certificate of insurance; it also would come within the purview of the definition of a insurance policy. If a Cover Note is issued, it remains valid till it is cancelled. Indisputably, the insurance policy was cancelled only after the accident took place. A finding of fact, owner of the vehicle, the cover note was not cancelled.*

17. *It is in the aforementioned situation, we are of the opinion, that the judgment of the High Court cannot be faulted. No doubt, a contract of insurance is to be governed by the terms thereof, but a distinction must be borne in mind between a contract of insurance which has been entered into for the purpose of giving effect to the object and purport of the statute and one which provides for reimbursement of the liability of the owner of the vehicle strictly in terms thereof. In that limited sense, a contract of insurance entered into for the purpose of covering a third party risk would not be purely contractual. We may place on record that an ordinary contract of insurance does not have a statutory flavour. The Act merely imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act as also the Contract. So far as the liability of the insurance company which comes within the purview of Section 146 and 147 is concerned, the same subserves a constitutional goal, namely,* *social justice. A contract of insurance covering the third party risk must, therefore, be viewed differently vis – vis a contract of insurance qua contract.*

18. *In National Insurance Co. Ltd. V. Laxmi Narain Dhut [(2007) 3 SCC 700], this Court opined:*

"23. As noted above, there is no contractual relation between the third party and the insurer. Because of the statutory intervention in terms of Section 149, the same becomes operative in essence and Section 149 provides complete insulation.

24. In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake license has to be considered differently in respect of third party and in respect of own damage claims."

The same view was reiterated in Oriental Insurance Co. Ltd. v. Meena Variyal & Ors. [(2007) 5 SCC 428] stating:

"14. The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may conductor and the one carried in a goods vehicle carrying goods."

This Court in Oriental Insurance Co. Ltd. v. Sudhakaran K.V. and Ors. [2008(8) SCALE 402] held:

"14. The provisions of the Act and, in particular, Section 147 of the Act were enacted for the purpose of enforcing the principles of social justice. It, however, must be kept confined to a third party risk. A contract of insurance which is not statutory in nature should be construed like any other contract."

This Court in Oriental Insurance Co. Ltd. v. Inderjeet Kaur [(1998) 1 SCC 71] held that once a certificate of insurance is issued, the insurance company would not be absolved of its obligations to third parties Yet again in Deddappa & Ors. V. Branch Manager, National Insurance Co. Ltd. [2008) 2 SCC 595], having regard to the provisions contained in Section 54(v) of the Insurance Act, 1938, in the fact situation obtaining therein, it was opined:

"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."

In the case of New India Assurance Co. Ltd. VS Rula and Ors (supra) the Hon'ble Supreme Court upon considering the decision of Oriental Insurance Co. Ltd. VS Inderjeet Kaur and Ors. (1998) 1 SCC. P-371 was pleased to observe as follows:

'It was in the background of the above statutory provisions that the provisions of Section 64-VB upon which reliance has been placed by Learned

Counsel for the appellant were considered by this Court in Oriental Insurance Co. Ltd. VS Inderjeet Kaur and Ors. (1998) 1 SCC 371 in which it was laid down as under:

"We have therefore this position. Despite the bar created by Section 64-VB of the Insurance Act, the appellant, an authorized insurer issued a policy of insurance to cover the bus without receiving the premium therefore. By reason of the provisions of Section 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured."

This decision which is a 3-Judge Bench decision squarely covers the present case also. The subsequent Cancellation of the Insurance Policy in the instant case on the ground that the cheque through which premium was paid was dishonoured would not affect the rights of the third party which had accrued on the issuance of the Policy on the date on which the accident took place. If 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 Insurance Policy on the ground of non-payment of premium would not affect the rights accrued in favour *of the third party. The above decision of this Court was relied upon by the High Court in negativing the contention raised by the appellant. The High Court in the circumstances was fully justified in dismissing the appeals. We find no infirmity in the judgment of the High Court. Consequently the appeals are dismissed. There will be no order as to costs.'*

Upon considering the Judicial decisions it is clear that once the Insurance Policy is issued and the cancellation of same is not communicated and received by the Insured the third party liability continues to exist.

In case where the intimation of dishonour of cheque and cancellation of Policy is given prior to accident as was the case of Oriental Insurance Co. Ltd. VS Inderjit Kaur and Ors (supra) the Insurance Company has to satisfy the award and may recover the same from the insured.'

Hence both Appeals FMA-2216 of 2016 and FMAT-931/2014 stands disposed. the Judgment and Award dated 11/04/2014 stands modified to the extent that the claimants/Respondents Santi Roy, Ashish Kumar Roy and Saswati Roy are entitled to from. National Insurance Company Limited and Bajaj Allianz Insurance Company Ltd. Rs. 7,50,000/- each along with interest @6% per annum from date of filing of claim case till today.

National Insurance Company Ltd. and Bajaj Allianz General Insurance Company shall deposit the compensation amount along with interest before Registrar General High Court Calcutta. Such deposit shall be made within 8 weeks from the date of communication of this Order. In the event compensation awarded by the Learned Trial Court is paid or deposited balance amount be deposited. The claimants will be entitled to withdraw the compensation upon compliance of necessary formalities.

With regard to the issue of recovery from the vehicle owner it appears that there is observation by Learned Trial Judge that fact of dishonour of cheque is not proved. However as detail reasons are not given on that issue the said findings cannot be sustained.

Bajaj Allianz General Insurance Co. Ltd. is permitted to conduct enquiry in this regard by giving the vehicle owner an opportunity of being heard and proceed in accordance with law. It is hereby made clear that in the event recovery proceedings are instituted the parties will be entitled to raise relevant points of law.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)