

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

MISC. APPEAL No.1699 of 2018

Between:-

- 1. NATIONAL INSURANCE CO. LTD THR
ASSTT MANAGER 495, INFRONT OF
VINEET TALKIES MADATAL,
JABALPUR, TP HUB VIJAY NAGAR
JABALPUR (MADHYA PRADESH)**

.....APPELLANT

(BY MS. AMRIT KAUR RUPRAH – ADVOCATE)

AND

- 1. SMT. GUDDI BAI**
- 2. KUMARI SANTOSHI BAI**
- 3. SANTOSH**
- 4. GOPAL SINGH**

5. **DHANIRAM UIKEY**

...RESPONDENTS

**(SHRI NEERAJ ASHAR – ADVOCATE FOR
RESPONDENT NO.1)**

Reserved on : 15.03.2022
Delivered on : 21.06.2022

This appeal has come up for hearing on this day, the Court passed the following:

ORDER

Appellant has filed this miscellaneous appeal under Section 173(1) of the Motor Vehicles Act, 1988 challenging award dated 21.11.2017 passed in Claim Case No.219/2014 by Eighteenth Additional Motor Accidents Claims Tribunal, Jabalpur (MP).

2. Brief facts of the case are that, an accident had occurred at about 12:20 pm on 02.12.2013 by vehicle i.e. Xylo Car bearing No.MP-20-CC/7823. Owner of the vehicle was Urmila Uikey and driver of said vehicle was Dhaniram. Vehicle was insured by appellant-Company by issuing policy in favour of owner namely Urmila Uikey. On fateful day, vehicle was driven rashly and negligently and it plunged into a pond which resulted in death of two persons by drowning.

3. Appellant has challenged the award on ground that Urmila Uikey owner of said vehicle had died on 08.10.2010. Insurance policy was brought on 19.05.2013 in name of a dead person. There cannot be any contract between as dead and living person and therefore, insurance policy is null and void and Claims Tribunal had committed an error in fixing liability on appellant/Insurance Company to indemnify the owner and pay to legal representatives of deceased.

4. Learned counsel appearing for respondents supported the award and relied on the reasons given by Claims Tribunal. Claim Tribunal had dismissed the aforesaid plea on the ground that party has complied with the promise before death of Urmila Uikey and other party has to perform their promise. Policy does not violate any fundamental conditions and Insurance Company has received full premium amount on 16.05.2013 and had issued the policy for period of one year only because information regarding death of owner was not given to Insurance Company. Insurance Company cannot be absolved of its liability and appellant was held to be liable.

5. Heard the counsel for the parties.

6. Section 19 of the Indian Contract Act, 1872 provides as under:-

“Section 19 in The Indian Contract Act, 1872

*19. Voidability of agreements without free consent.—When consent to an agreement is caused by coercion, 1[***] fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so*

*caused. —When consent to an agreement is caused by coercion, I[***] fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused." A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.*

(Exception) —If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence. Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations

(a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B. (a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B."

(b) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the

factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation. (b) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation."

(c) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and mortgage-debt redeemed. (c) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and mortgage-debt redeemed."

(d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A. (d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A."

(e) A is entitled to succeed to an estate at the death of B; B dies: C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A. (e) A is entitled to succeed to an estate at the death of B; B dies\: C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A."

7. In this case as owner has died before purchasing insurance policy, therefore, there was a misrepresentation on the part of legal representatives/driver/owner of vehicle in contracting with the appellant for purchase of policy in name of deceased owner Urmila Uikey. Contract entered between the parties is not voidable as consent given by appellant for covering the risk on purchase of policy was given by misrepresentation or silence hiding the fact that Urmila Uikey has died as appellant had means to discover the truth with ordinary diligence. Proposal is to be forwarded and signed by the purchaser of the policy. Since, owner-Urmila Uikey has died, therefore, she could not have appeared for signing application and proposal for purchase of policy. Insurance Company made no efforts to find out why Insured has not appeared and signed the application. Insurer could have discovered the truth by ordinary diligence following proper procedure for issuing of policy. Insurer received the money and had issued the policy. Insurer has not exercised ordinary care and diligence in the case. During pendency of case no effort was made for declaring policy to be void or cancel the

policy. In these circumstances, policy cannot be held to be voidable at option of appellant. No error can be found in the award which has been passed by the Claims Tribunal.

8. Miscellaneous appeal is *dismissed*.

(VISHAL DHAGAT)
JUDGE

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