RESERVED ON : 23.04.2026

PRONOUNCED ON : 03.06.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3rd DAY OF JUNE , 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS FIRST APPEAL NO.4312 OF 2021(MV-D)

C/W

MFA CROSS OBJECTION NO. 152 OF 2021 (MV-D)

IN MFA No. 4312/2021

BETWEEN:

RELIANCE GENERAL
INSURANCE COMPANY LTD.,
EAST WING, 5TH FLOOR NO.28
CENTENARY BUILDING, M G ROAD,
BENGALURU - 560 001.
NOW REP BY MANAGER LEGAL.

...APPELLANT

(BY SRI. KRISHNA SWAMY, ADVOCATE A/W
SRI. ASHOK N PATIL, ADVOCATE)

AND:

1. SUSMITA SUSARLA,
W/O LATE. TENNETI SASIKANTH,
AGED ABOUT 38 YEARS,

2. TENNETI SURAJ,
S/O LATE. TENNETI SASIKANTH,
AGED ABOUT 14 YEARS,

3. TENNETI SOURISH,
S/O LATE. TENNETI SASIKANTH,
AGED ABOUT 13 YEARS,

4. TENNETI VENKATA RAJANIKANTH,
S/O LATE. T. RAMA MURTHY,
AGED ABOUT 68 YEARS

5. TENNETI JAYALAKSHMI,
W/O TENNETI VENKATA RAJANIKANTH,
AGED ABOUT 65 YEARS,

ALL ARE RESIDING AT NO.Y-23,
CONCORDS SILICON VALLEY,
BESIDE WIPRO GATE NO.14
ELECTRONIC CITY,
BENGALURU - 560 100.

6. SURYA SANKARA RAO BOTHSA,
S/O CHANDRAIAH,
36-20-11, INNISPETA,
RAJAMUNDRY,
EAST GODAVARI DISTRICT,
ANDRA PRADESH - 533 106.

…RESPONDENTS

(BY SRI. KEETHI KUMAR D., ADVOCATE FOR R1 TO R5,
R2 & R3 ARE MINORS REPRESENTED BY R1,
MS. PRUTHA BHARATHI, ADVOCATE FOR R6)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, AGAINST THE JUDGMENT AND AWARD DATED:16.01.2021 PASSED IN MVC NO. 451/2010 ON THE FILE OF THE JUDGE, COURT OF SMALL CAUSES, MOTOR ACCIDENT CLAIMS TRIBUNAL, BENGALURU (SCH-09), AWARDING COMPENSATION AMOUNT OF RS.86,15,000/- WITH INTEREST AT 6 PERCENT P.A. FROM THE DATE OF PETITION TILL ITS REALIZATION.

IN MFA.CROB NO. 152/2021

BETWEEN:

1. SMT. SUSMITA SUSARLA,
W/O LATE TENNETI SAKIKANTH,
AGED ABOUT 38 YEARS,
HOUSE WIFE,
RESIDING AT NO Y-23,
CONCORD SILICON VALLEY,
ELECTRONIC CITY PHASE -1,
BANGALORE - 560 100.

2. TENNETI SURAJ,
S/O LATE TENNETI SASIKANTH,
AGED ABOUT 16 YEARS,
RESIDING AT NO Y-23,
CONCORD SILICON VALLEY,
ELECTRONIC CITY PHASE-1,
BANGALORE - 560 100.

3. TENNETI SOURISH,
S/O LATE TENNETI SASIKANTH,
AGED ABOUT 15 YEARS,
RESIDING AT NO Y-23,
CONCORD SILICON VALLEY,
ELECTRONIC CITY PHASE-1,
BANGALORE - 560 100.

APPELLANT NO.2 AND 3 ARE MINORS
AND ARE REPRESENTED BY THEIR
MOTHER AND NATURAL GUARDIAN
APPELLANT NO.1 SMT. SUSMITA SUSARLA.

4. TENNETI VENKATA RAJINIKANTH,
S/O LATE T RAMA MURTHY,
AGED ABOUT 62 YEARS,
HOUSE WIFE,
RESIDING AT NO Y-23,
CONCORD SILICON VALLEY,
ELECTRONIC CITY PHASE-1,
BANGALORE - 560 100.

5. SMT. TENNETI JAYALAKSHMI,
W/O TENNETI VENKATA RAJINIKANTH,
AGED ABOUT 59 YEARS,
RESIDING AT NO Y-23,
CONCORD SILICON VALLEY,
ELECTRONIC CITY PHASE-1,
BANGALORE - 560 100.

...PETITIONERS

(BY SRI. KEERTI KUMAR D. NAIK ADVOCATE)

AND:

1. SURYA SANKARA RAO BOTHSA,
S/O CHANDRAIAH,
36-20-11, INNISPETA,
RAJAHMMMMUNDRY,
EAST GODAVARI DISTRICT.
ANDHRA PRADESH - 533 106.

2. RELIANE GENERAL INSURANCE
CO., LTD.,EAST WING, 5TH FLOOR,
NO.28, CENTENARY BUILDING,
M G ROAD, BENGALURU - 560 001.
REP BY ITS MANAGER LEGAL
MR.ASHOK N PATIL.

...RESPONDENTS

(BY MS. PRUTHA BHARATHI., ADVOCATE FOR R1.
SRI. KRISHNA SWAMY ADVOCATE A/W
SRI. ASHOK N PATIL, ADVOCATE FOR R2)

THIS MFA CROB IS FILED UNDER ORDER XLI RULE 22 OF THE CPC, READ WITH SECTION 173(1) OF MOTOR VEHICLE ACT, AGAINST THE JUDGMENT AND AWARD DATED:16.01.2021 PASSED IN MVC NO.451/2010 ON THE FILE OF THE JUDGE, COURT OF SMALL CAUSES, MOTOR ACCIDENT CLAIMS TRIBUNAL, BENGALURU (SCH-09), PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL AND CROSS OBJECTION HAVING BEEN RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT IS DELIVERED/ PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

The appeal in MFA.No.4312/2021 and MFA.Crob.No.152/2021 are by the Insurer and the claimant respectively, calling in question the judgment and award dated 16.01.2021 in MVC.No.451/2010 passed by the Court of Small Causes and Motor Accident Claims Tribunal, Bengaluru (SCH-09)[1].

2. The Insurer is in appeal calling in question the liability fastened on it on the premise that the cheque issued towards the premium covering the insurance policy gets dishonoured accordingly in terms of the endorsement stated in the policy, the policy becomes *void ab initio* and there is no liability on the insurance to make good any

[1] 'Tribunal' for short

compensation. The claimant is in cross objection seeking for enhancement of compensation.

3. The parties are referred to as per their rankings before the Tribunal.

4. The date of accident, death of deceased Tenneti Sasikanth on 11.06.2009 and involvement of the vehicle are not in dispute. The dispute raised by the Insurer is with respect to fastening of the liability on ground of non-existence of insurance policy in view of dishonour of check issued towards payment of premium amount and so far as claimants are concerned on the quantum of compensation.

5. Heard Sri.Ashok N. Patil, learned counsel appearing for the Insurer in appeal as well as cross-objection; Sri. Keerthi Kumar D.Nayak, learned counsel appearing for the claimants in the appeal as well as cross-objection and Ms.Prutha Bharathi, learned counsel for respondent No.6 and respondent No.1 in cross objection.

6. Further this Court requested Sri. A.N.Krishnaswamy, learned Senior panel counsel for the Insurance Company to assist the Court on the above

grounds raised by Sri.Ashok Patil, in view of peculiar facts involved in the case on hand.

7. It is the case of the claimants before the Tribunal that husband of claimant No.1, father of claimant Nos.2 to 4 and son of claimant No.5 by name Tenneti Sasikanth died in an road traffic accident occurred on 11.06.2009, due to the actionable rash and negligent driving by the driver of the Scorpio, bearing No. AP-7-TT-4889. It was the case of the claimants that the deceased Tenneti Sasikanth was travelling as an inmate in the Scorpio from Rajamundry to Vishakapatnam. When the vehicle reached near Nutanagunte Palyam, on NH-5 near Kasimkota Mandalam, Vishakapatnam, A.P, the driver of the Scorpio drove the same in rash and negligent manner with high speed and dashed against a lorry bearing registration No.KA-01-AD-4666, which was proceeding ahead of the Scorpio. As a result of the accident, the deceased Tenneti Sasikanth succumbed to the injuries on the spot and another person by the name Chandu suffered grievous injuries and was admitted to Yalamanchili,

Government Hospital. According to the claimants, the deceased was holder of Master degree in Computer Applications from Andhra University and he has completed his Sun Certified Enterprise Architect (SCEA) course in the year 2003. His academic performance is excellent and he was brilliant, intelligent and dynamic in his profession. He earlier worked in VJIL Consulting Services as System Executive for a gross annual salary of Rs.1,24,080/- and later joined BEA Systems Inc. at East Havn, USA as Development Relations Engineer for an yearly salary of USA $72,000 p.a. Thereafter, he joined NISCO in USA with annual salary of $1,10,000/- p.a. Thereafter, he continued in Indian operations of NISO as a Managing Director which was later known as Razor Sight Software India Pvt. Ltd., and worked as Senior Director, Project Engineering situated at Koramangala, Bengaluru, where he was earning Rs.30,00,000/- p.a. Later on he joined Sun Micro Systems India Pvt. Ltd., as Staff Engineer and was earning Rs.30,20,876/- p.a. As on the date of accident his earning was Rs.30,20,876/- p.a., and due to untimely death the

petitioners/claimants were put in financial crunches and lost love and affection. Accordingly, sought compensation for Rs.10,00,00,000/- by filing claim petition before the Tribunal.

8. In response to the notice the respondents-Insured and Insurer both appeared through their respective counsels.

9. The respondent No.1 filed written statement denying the contentions taken by respondent No.2 in its objections stating that as on the date of accident the vehicle was possessing valid insurance package policy with respondent No.2. The vehicle was rented to the deceased with a driver by name Kusuva.G, who was holding valid and effective driving license. The policy was renewed on 06.06.2009 by paying premium of Rs.12,000/- in cash. Respondent No.2 issued a cover note acknowledging the payment of premium and effectively renewing the insurance package policy valid for the period starting from 08.06.2005 to 07.06.2010, whereas the accident has occurred on 11.06.2009. As such, the vehicle is covered

under the insurance. The respondent No.2 played fraud in manipulating the date of coverage of said policy from 13.06.2009 and issued the same on 15.10.2009 and liability if any, fastened on respondent must be indemnified by respondent No.2 and further denied paragraph Nos.8 to 23 stated in the objection of respondent No.2 and sought to dismiss the petition against him.

10. The respondent No.2/insurer has filed its written statement denying the material facts contained in the petition. It was specifically contented by the Insurer that the RC owner of the vehicle had approached the Sales Manager of the Insurer for insurance coverage of the vehicle in question, but after incorporating the details in the above mentioned cover note, he expressed his inability for inspection of his vehicle. He had neither paid the premium on 06.06.2009 nor on 08.06.2010. In pursuance thereof, the second respondent issued a letter to the first respondent on 13.06.2009 that the proposal was not yet accepted on the following grounds i.e., cheque having no

date, signature of the proposer not made in the proposal cum cover note No.1609000395052, pre-inspection not done (as the previous policy expired on 22.05.2009-gap of proposal for renewal is more than 15 days).

11. It was further contented by the Insurer that respondent No.1/Insured replied to the above letter dated 20.09.2009 stating that the cheque and photos are already submitted to the Insurer at the time of issuance of policy, and if at all any requirements are there to be fulfilled, the Insurer can send his agent and who can collect the same from the Insured and sought for needful as early as possible.

12. It was further contented by the Insurer that the cheque, which was issued towards the payment of premium for issuance of insurance policy, bearing Cheque No.647191 dated 13.06.2008 drawn on ICICI Bank, Rajahmundry branch, for a sum of Rs.11,591/-, when presented for encashment, returned dishonoured. It was further contented by the Insurer that the accident occurred on 11.06.2009 and the cheque was issued on

13.06.2009 as such, there was no premium paid either by cheque or by cash on the date of the alleged accident and the cheque having been dishonoured, the policy cover note though issued stands cancelled since inception in terms of the note provided in the insurance policy/cover note.

13. It was further contented that the Insurer has already initiated a departmental inquiry against the Sales Manager for dereliction of his duties, who had already left the job with the Insurer and due to pending inquiry, his terminal dues are not yet settled by respondent No.2. Further, the Insurer denied the date, time and place of the accident as well as the contention that the deceased succumbed to the injuries on the spot in the alleged accident. Further, the Insurer denied that the deceased was aged 35 years and earning Rs.2,50,000/- per month and the petitioners/claimants were entirely depending upon the deceased. Further, contended that the compensation sought at the rate of Rs.10,00,00,000/- is exorbitant and fanciful and accordingly, sought to dismiss

the petition. The tribunal after completion of pleadings farmed issues and put the case on trail.

14. In order to substantiate their contentions first petitioner examined as PW1 and three other witnesses as PW2 to PW4 and produced 35 documents and marked the same as Ex.P1 to Ex.P35. Respondent No.2 examined its Manager legal-claims as RW1 and produced 15 documents and marked the same as Ex.R1 to Ex.R15. Subsequently to the remand of the matter respondent No.1 examined through video conference as RW2 and produced 2 documents and marked the same as Ex.R16 and Ex.R17.

15. The Tribunal upon consideration of pleadings framed before it, answered Issue No.1 regarding the cause of negligence and accident in 'affirmative' against the driver of the Scorpio and Issue No.2 'partly in affirmative' and proceeded to award compensation of Rs.86,15,000/- with 6% p.a. from the date of petition till its realisation. So far as liability is concerned, the Tribunal fastened the entire liability on respondent No.2 after deliberating on the same and coming to the conclusion that the owner of

Scorpio obtained policy of insurance from the Insurer on 06.06.2009 for which premium was paid through cheque as well as cash. The accident has occurred on 11.06.2009. It was only thereafter the Insurer cancelled the insurance policy by communication dated 14.06.2009 on the ground of dishonour of cheque which was issued by the son of the Insured and further finding that the number mentioned in the cover note i.e., 109000395052 finds place in the insurance policy. As such, the cancellation of policy does not arise and further emphasizing on Ex.R16 and Ex.R4, held that the Ex.R16 is the original cover note and Ex.R4 is the copy of the same wherein the mode of payment mentioned cash of Rs.12,000/- paid towards premium and the signature of the proposed and authorized signatory of the Insurer was found at Ex.R16 and the same was issued on 06.06.2009. As such, held that the vehicle involved in accident had valid policy as on the date of accident since the cover note to the vehicle issued on 06.06.2009 and on the same cover note number respondent No.2 issued policy on 13.06.2009 and relying on the judgment of this

Court in MFA.No.31894/2012, in the case of ***Sudharshan Vs. Subash and another***, and considering the effect of Section 64VB of Insurance Act, held that soon after payment of premium by the owner and received by the Insurance Company, the contract of insurance begins between them. Applying the said ratio to the present case, the Tribunal has held that in view of Ex.R16 the Insurer has received premium amount of Rs.12,000/- in cash from respondent No.1 on 06.06.2009. In that view of the matter the policy issued covers the risk of the vehicle in question. As such held that the defence taken by the Insurer does not come to its aid to contend that the alleged vehicle in question had no valid insurance as on the date of accident and fastened the liability on the insurer. It is this judgment and award passed by the Tribunal called in question both by Insurer and the claimant on the grounds stated supra.

16. Sri. Ashok N.Patil, learned counsel taking us through the trial Court records with all the vehemence submits that though there is mention of Rs.12,000/- cash

paid in Ex.R16 produced by respondent No.1. But the Ex.R4, which is the copy of Ex.R16 does not indicate regarding payment of cash of Rs.12,000/-. However, the content stated in the column of payment details clearly shows that the calculation of the premium which required to be paid i.e., Rs.11,591/- by the Insured, even the signatures found in Ex.R16 are not found in Ex.R4, which clearly shows that the cover note produced by respondent No.1 is concocted. He further inviting our attention to Ex.R2 and Ex.R3 submits that a letter was issued on 13.06.2009 stating that the cheque issued does not bear the date, signature of the proposer not found on the proposal cover note and pre-inspection was not done and called upon the insured to comply with the directions. In reply to the said letter there is nothing stated by the owner regarding payment of cash of Rs.12,000/- as on the date of issuance of the cover note produced by him as per Ex.R16. However, the insured has stated that the cheque and photos are already available with the Insurer and if any, further requirements they can send their agent and

he could collect the same from the Insured. However, the cheque issued gets dishonoured on presentation with respect to premium paid towards issuance of insurance policy.

17. In the event of dishonour of cheque(s), as per the note provided in the document/cover note the policy issued automatically stands cancelled from inception irrespective of whether a separate communication is sent or not. In view of dishonour of the cheque issued towards payment of premium or issuance of cover note and the insurance policy, the same stands cancelled from inception as such, the policy in hand has become *void ab initio*. Even, if it is assumed that the cover note is issued prior to the accident, the Insurer cannot be made liable to pay the compensation, fastening the liability on it as the parties issued becomes *ab initio void*. The Tribunal has failed to consider this aspect of the matter and weighed much on Ex.R16, which is a created document and not corresponding with the copy of the same at EX.R4 as the writings found in the photocopy and in the original, varies.

18. He further submits that the Tribunal has failed to take into account the factual aspects of the matter and wrongly applied the ratio laid down by this Court in the case of ***Sudharshan*** supra which are factually distinguishable and erred in applying Section 64VB of the Act and sought to allow the appeal, and set aside the liability fastened on the Insurer.

19. In contrast, Ms. Prutha Bharati, learned counsel for Insured with all vehemence submits that a perusal of Ex.R16 and Ex.R4 clearly indicates that the Insured has played fraud by creating photocopy which is not corresponding with Ex.R16. A perusal of Ex.R16 clearly indicates that both the Insured as well as the Manager of Insurer have subscribed their signature in the original policy. However, the same does not find place in the Ex.R4. All the writings in Ex.R4 and R16 are identical as the same are in the same handwriting. However, in the premium details column found in Ex.R16 Rs.12,000/- stated to be paid in cash. However, nothing found in premium details in the photocopy which clearly shows that

the Ex.R4 is created one. The contentions of the Insurer itself clearly shows that they have initiated disciplinary proceedings against the employee who has issued the cover note after accepting Rs.12,000/- in cash towards the premium, whose signature found in Ex.R16 and who has left the job and even not collected the dues accrued to him towards his service. This clearly postulates that the insurance company in order to overcome its liability created the document Ex.P14.

20. Another circumstances has been argued by Ms.Prutha Bharathi, is that the accident has occurred on 11.06.2009. Despite the same the Insurer had written a letter regarding the cheque to the owner who has replied as per Ex.R3. Further, the cheque was presented for encashment on 22.09.2009 which returned with endorsement as 'funds insufficient'. This clearly shows that the cheque was presented after 3 months deliberately when the accident has already occurred on 11.06.2009, even the notice intimating the cancellation of policy was on 14.10.2009 which was a month after the dishonour of

cheque. This clearly shows that the respondent has created documents to shirk from its liability to pay the compensation. The contentions of the Insurer in its statement of objections itself indicates the misdeeds committed by its employee, which now cannot be shouldered on the Insured to avoid the liability. The Tribunal having considered all these aspects of the matter has come to a right conclusion relying on Ex.R16 which is the cover note bearing signature of the concerned Manager wherein the premium amount is stated to be paid in cash of Rs.12,000/- and accordingly, sought to dismiss the appeal filed by the Insured.

21. Whereas, Sri.Keerthi Kumar.D, learned counsel appearing for the claimant in the appeal as well as cross objection, with all vehemence submits in line with the contentions taken by the Insured, further submits that, mere absence regarding payment of premium amount by cash in the reply to first notice dated 30.06.2009, will not take away the right of the Insured as the cover note stated at Ex.R16 clearly shows the payment by way of

cash which is countersigned by the Manager along with the Insured.

22. He further submits that, the Insurer has created document Ex.R4 as argued by learned counsel for the Insured only to deprive the claimants from repaying the fruits of award. He further submits that even otherwise the delay in submitting the cheque on 22.09.2009, which is much after the accident and intimation of cancellation of policy on 14.10.2009, thereafter clearly shows the dereliction of duty on the part of the respondent-Insurer to deprive the beneficiaries of their rights under the policy. The contention of respondent that they have already initiated departmental inquiry against the person who has left the job thereafter, clearly shows that the said person was responsible for entire chaos occurred. As such, the Insurer should not be permitted to take a defence of exoneration from the liability to pay the compensation and sought to dismiss the appeal by Insurer.

23. So far as enhancement of compensation is concerned, learned counsel with all vehemence submits

that the Tribunal has considered income at Rs.5,00,000/- per annum and added 40% to the same and awarded total compensation of Rs.84,00,000/- towards loss of dependency. Even the amount awarded under conventional heads are on the lower side. The petitioners are entitled for 10% escalation for each completed 3 years from 2017. The Tribunal though deducted 1/4th but awarded inadequate compensation. The reasons stated by the Tribunal in paragraph No.22, while considering the income of the petitioners are erroneous. As such, the income be considered at Rs.30,20,876/- as claimed by the claimants and award appropriate compensation by allowing the appeal filed by the Claimants.

24. This Court, prior to proceeding with the matter, has called upon Sri. A.N. Krishnaswamy, learned Senior counsel on the panel of Insurance Company to assist and throw some lights in the case, wherein the premium amount paid by way of cheque gets dishonoured subsequent to occurrence of accident and whether the Insurer in such eventuality be made liable to pay

compensation notwithstanding the dishonour of cheque issued towards payment of premium of the insurance policy.

25. Sri. Krishnaswamy, learned Senior panel counsel with all fairness submitted that the position was different prior to 2002. In view of dishonour of cheque subsequent to 2002, the policy gets vitiated as *void ab initio* without there being any intimation. The premium paid by way of cheque is for the contract to cover the risk of the Insured. In the absence of contract by means of cancellation of policy for dishonour of cheque, there is no obligation or duty on the Insurer to satisfy the compensation by indemnifying the Insurer. As the contract came to an end immediately, from the date of inception in view of dishonour of cheque. In the case on hand, the accident occurred in the year 2009 i.e., after 2002, in view of the subsequent amendments to the Act, the Insurer, even in the case where the cheque(s) gets dishonoured subsequent to occurrence of accident, even in the teeth of a proposal covering note or insurance policy, is not liable

to indemnify the Insured as the contract gets vitiated from the inception even on subsequent dishonour of the cheque after the accident and in the case on hand there is a clear intimation printed in the cover note as well as policy which clearly shows that in the event of dishonour of cheque the coverage in the policy gets cancelled from the inception even in the absence of any specific intimation to that effect. As such, the policy becomes *void ab initio.* In the absence of policy even the company cannot be made liable to pay the compensation and recover the same. As there is no obligation on the part of the Insurer to make good compensation directed against him in the absence of a policy covering the contract. The insurance policy is a pure contract between the Insured and Insurer and gets vitiated in view of the terms stated in the policy. The contract gets cancelled in the case on hand from the very inception due to dishonour of cheque paid towards premium amount, as such the contract comes to an end and Insurer therefore cannot be made liable to pay compensation.

26. Having considered the rival submissions, we have perused the entire appeal papers as well as the cross-objection papers and the trial Court record.

27. The points that would arise for our consideration are as under:

(i) Whether the appellant-Insurer made out a case to exonerate it from liability to pay compensation?

(ii) Whether the claimants have made out a case for enhancement of compensation?

28. Our answer to the above point for consideration are as under:

Point No.1: Negative

Point No.2: Partly in affirmative.

29. Before averting to the facts of the case, with reference to the liability to pay the compensation and quantum of compensation, it is very apt to refer to the judgment of the Supreme Court, in the case of ***UNITED INDIA INSURANCE COMPANY LIMITED Vs.***

LAKSHMAMMA AND OTHERS[2]. The judgment has been rendered in the case wherein the accident had occurred on 11.05.2004 and the policy was issued on 14.04.2004 covering the period, so far as the bus in the case on hand concerned from 16.04.2004 to 15.04.2005. The accident had occurred in said case on 11.05.2004 at 08.50 p.m., claiming the life of one M.Nagaraj who was travelling in the bus, who fell down from the bus through the door by sudden application of brakes negligently by the driver and died to the injuries sustained in that accident. The Tribunal in the said case recorded a finding of fact, on examination of the documentary and oral evidence that cancellation of policy because of non-payment of premium was done by the Insurer after the accident had taken place i.e., the intimation of cancellation was given to the owner on 21.05.2004 whereas the accident took place on 11.05.2004. The Tribunal thus, held that the Insurer was liable to pay compensation to the claimants. The Supreme Court emphasized much on Section 64VB of the Insurance

[2] (2012) 5 SCC 234

Act, 1938, as discerned in paragraph No.9 of the judgment, which reads as under:

> ***9.*** *Section 64-VB of the Insurance Act, 1938 (for short "the Insurance Act") provides as under:*
>
> *"**64-VB.No risk to be assumed unless premium is received in advance**.—(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.*
>
> *(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.*
>
> *Explanation.—Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.*
>
> *(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.*
>
> *(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.*

> *(5) The Central Government, may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.*
>
> *(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer."*

30. The Supreme Court has further observed at paragraph No.15, which clearly indicates that the Insurance Company/Insurer in the said case was responsible for its predicament. As the insurance policy was issued upon receipt only of a cheque towards premium in contravention of provisions of Section 64VB of the Insurance Act. The public interest therefore, represented that a policy of Insurance serves must, clearly, prevail over the interest of the appellant. The Supreme Court after considering erobarately the entire facts of the case and relying on the earlier judgments though they were prior to 2002, but the case involved in the judgment wherein the accident occurred after 2002 i.e., in 2004. The Insurer was made liable to make good compensation in paragraph Nos.26, 27 and 28 of its judgment which reads as under:

*"**26.** In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised 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 authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured 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.*

***27.** Having regard to the above legal position, insofar as the facts of the present case are concerned, the owner of the bus obtained the policy of insurance from the insurer for the period 16-4-2004 to 15-4-2005 for which premium was paid through cheque on 14-4-2004. The accident occurred on 11-5-2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13-5-2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on 21-5-2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy the award of compensation passed in favour of the claimants.*

***28.** In view of the above, the judgment of the High Court impugned in the appeal does not call for any interference. The civil appeal is dismissed. However, the insurer shall be at liberty to prosecute its remedy to recover the amount paid to the claimants from the insured. No order as to costs."*

31. In the case on hand even according to the Insurer cover note was issued on 06.06.2009, accident

occurred on 11.06.2009, cheque was issued on 13.06.2009 presented on 22.09.2009, dishonoured on the same day but intimation of cancellation of policy issued on 14.10.2009, in view of judgment of Supreme Court in Lakshmamma supra, the Insurer is held liable to pay compensation. There is another reason to discard the case of the Insurer. A perusal of documents placed on record clearly indicates that in Ex.R16 the payment was shown by means of cash, which is countersigned by the concerned Manager of the Insurer. A perusal of Ex.R4 differs from Ex.R16 only with reference to details of premium amount and counter signature, but in all other aspects corresponds with the Ex.R16. This perhaps creates a suspicion in the mind of the Court that the document at Ex.R4 is dubious.

32. The contention of the respondent-Insurer in the written statement that they have already initiated departmental proceedings against the person who has left the job subsequent to the incident and even has not claimed his dues accrued to his benefits clearly postulates a situation and perhaps it is his dereliction which has put

the Insurance Company in the grave situation which the Insurer tried to overcome by means of producing purported dubious document at Ex.R4.

33. In these circumstances, we but have to accept Ex.R16 which is in all other aspect corresponds with Ex.R4 except in premium details and counter signature. To the query of the Court regarding Ex.R16, as per the stand of the Insurer that the same was created and forged document as to whether they have taken any action against the Insured on the said act. The Learned counsel for the Insurer is answerless and not produced any document to that effect to contend that they have initiated any action for production of such a forged document i.e., Ex.R16 as per their contention.

34. In the cross examination of RW2, i.e., the Insured, a specific question was put by the Court as to what was the requirement and necessity which made the Insured to issue a cheque when he had paid the cash of Rs.12,000/- against the premium amount of Rs.11,591/-. He has answered the said question stating that the cheque

was asked by the Company to make good for shortage of amount, if any. Though, he has stated that he has not stated anything regarding the mode of payment by way of cash in his reply at Ex.R3. In the cross examination, it is forthcoming that the Insured has approached the Company for return of the cheque, since he has paid the amount in cash, however, the company has not returned the cheque. It is also forthcoming in the cross examination that the Insured has registered a case against the Company for threatening him to return the original cover note. However, he has stated that he has not taken any legal action against the Company for non-return of cheque. He has denied the suggestion that there is no relationship or contract between him and the Insurer for coverage of policy and there was no contractual obligation between him and the Company to indemnify him. Further, he has denied the suggestion that he is liable to pay compensation for not having policy as on the date of accident.

35. A perusal of entire cross examination clearly postulates that nothing worthwhile has been elicitated to support the contention of the Insurer. In that view of the matter, we are of the considered opinion that the Insured has paid the insurance premium amount by way of cash.

36. The Insurance Company subsequent to accident in order to shirk its liability to pay the compensation by suppressing the fact of payment of premium amount by cash presented the cheque issued towards satisfaction of excess amount, if any, that too after 3 months from the date of accident and intimated the cancellation of the policy after 4 months of accident i.e., 13.10.2009. In these circumstances on both counsels that is by document at EX.R16 and in terms of the law laid down by the Supreme Court in the case stated supra, there was an Insurance policy covering the risk and the Insurance Company is liable to pay the compensation.

37. Accordingly, we answer point No.1 against the Insurer and dismiss the appeal filed by the Insurer only on the ground of liability taking the contention that there is

no insurance policy available as on the date of accident to pay the compensation.

38. So far as quantum of compensation is concerned, we find force in the argument of learned counsel appearing for the claimants. The Tribunal in paragraph No.31 of its judgment discussed on the earnings of the deceased, which was stated to be Rs.11,11,111/- p.a., as on 12.09.2006 as basic salary and he was also eligible to joining bonus of Rs.3,00,000/- subject to tax. It is further forthcoming as per Ex.P20 which are the IT returns of deceased. The same was filed as an employee of the Rozor Sight Software Pvt. Ltd., during the year 2007-08 to 2009-10. A perusal of the same clearly shows that for the financial year 2005-2006 the salary of the deceased was Rs.21,32,816.51 and TDS deducted was Rs.5,59,107/-. During the year 2006-2007 the salary of the deceased was Rs.13,87,232/- and TDS deducted was Rs.3,84,732/-. So far as 2007-08 the salary of the deceased was Rs.29,29,044/- and TDS deducted was Rs.89,920/-. During the year 2008-09 the salary of

the deceased was shown as Rs.7,55,219/- and TDS deducted was Rs.2,16,422/-. As per Ex.P18, the letter issued by Metasparc Software India Pvt. Ltd. Company offered the deceased Rs.24,00,000/- as remuneration per annum. However, the Tribunal, despite recording all these findings on the basis of the IT returns as well as the offer, considered the lowest income of Rs.7,55,219/- p.a., as per Ex.P20 and despite noticing that he was paying income tax at the rate of Rs.2,16,422/- on Rs.7,55,219/- considered the income at Rs.5,00,000/- which appears to be on the lower side. In our considered opinion, in view of the materials discerned by the Tribunal in the para stated supra, if a sum of Rs.15,00,000/- is considered as income per annum as on the date of accident and after deducting the income tax, would meet ends of Justice.

39. As per the income tax slab, the prevailing on the death of the deceased, the tax tentatively comes to Rs.3,55,000/- and after adding the other cess, the same may comes upto Rs.3,65,000/- to Rs.3,70,000/-. If a sum of Rs.3,70,000/- is deducted from Rs.15,00,000/- the net

income available is Rs.11,30,000/- i.e., the loss of dependency to the claimants. Considering the age of deceased as 35 years as on the date of accident, in view of law laid down by the Supreme Court in the case of ***NATIONAL INSURANCE COMPANY Vs. PRANAY SETHI***[3], 40% required to be added towards future prospectus. If 40% is added to the said sum, the same comes to Rs.15,82,000/- and after deducting 1/4th towards personal expenses of the deceased, the loss of dependency per annum comes to Rs.11,86,500/-. As per the age, the proper multiplier would be '16' and if the amount Rs.11,86,500/- is multiplied by 16 the same comes to Rs.1,89,84,000/- which would be the loss of dependency for which the claimants are entitled. The claimants are also entitled for loss of consortium including filial, spousal as well as parental at the rate of Rs.40,000/- each i.e., Rs.40,000x5 = Rs.2,00,000/-.

40. The claimants are also entitled for 10% escalation on the conventional heads in view of the law

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laid down by the Supreme Court in the case of ***Pranay Sethi*** supra, which would comes to 20% in the case on hand, since the accident has occurred in 2009 and for each completed 3 years since 2017. Accordingly, the claimants are entitled for 20% escalation on the conventional heads which would come to Rs.46,000/-.

41. The claimants are also entitled for Rs.15,000/- each under the head loss of estate and funeral expenses and transportation of body. In these circumstances, the compensation awarded by the Tribunal requires reconsideration which is as follows:

Sl. No.	**Heads**	**Compensation awarded by the Tribunal In Rs.**	**By this Court In Rs.**
1.	Towards loss of dependency	84,00,000-00	1,89,84,000-00 (Rs.11,86,500x16)
2.	Towards loss of consortium	40,000-00	2,00,000-00 (Rs.40,000x5)
3.	Towards loss of Filial consortium	1,60,000-00	-
4.	Towards transportation of dead body, funeral & obsequies ceremony expenses	15,000-00	15,000-00
5.	Towards loss of estate	-	15,000-00
6.	20% escalation (for two terms of three completed years on conventional heads)	-	46,000-00
	TOTAL	**86,15,000-00**	**1,92,60,000-00**

42. Accordingly, claimants are entitled for re-determined compensation of ***Rs.1,92,60,000/-***.

43. For the forgoing reasons, we proceed to pass the following:

ORDER

i. MFA.No.4312/2021 filed by the Insurer is ***dismissed***.

ii. The amount in deposit shall be transmitted to the concerned Tribunal for disbursement.

iii. MFA.Crob.No.152/2021 filed by the claimants seeking enhancement is ***allowed-in-part,*** the judgment and award passed by the Tribunal dated 16.01.2021 in MVC.No.451/2010 passed by the Tribunal is modified and re-determined at ***Rs.1,92,60,000/-***.

iv. The appellant-Insurer shall deposit balance re-determined compensation before the concerned Tribunal within six weeks from the date of receipt of copy of this order along

with 6% interest per annum from the date of petition till its realisation.

v. The apportionment and disbursement ordered by the Tribunal is unaltered.

vi. No order as to costs.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(T.M.NADAF)
JUDGE

PK