

-----  
**(2025) 5 ILRA 1756**  
**APPELLATE JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 08.05.2025**

**BEFORE**

**THE HON'BLE ABDUL MOIN, J.**

First Appeal From Order No. 37 of 2022  
 Along with  
 Other Connected Cases

**The National Insurance Company Ltd.**  
**...Appellant**  
**Versus**  
**Reetu Devi & Ors. ...Respondents**

**Counsel for the Appellant:**  
 Satyajit Banerji

**Counsel for the Respondents:**  
 Satendra Nath Rai

**Civil Law- The Motor Vehicles Act, 1988-Section 147---** The accident is said to have occurred on 08.01.2016 and the policy which had been issued on 28.11.2014 was cancelled on 09.01.2015 and the intimation to the insured was sent on 11.02.2015 i.e. the policy having been cancelled and the holder having been informed are all events which took place prior to the accident consequently there cannot be any occasion for an insurance policy to have subsisted on the date of accident i.e. 08.01.2016 and as such, the insurance Co. cannot be held liable to pay the amount at the first instance and to recover from the owne.

Matter remitted. (E-15)

**List of the cases referred-:**

1. United India Insurance Co.Ltd. Vs Laxmamma & ors.- AIR 2012 SC 2817
2. National Insurance Co. Ltd. Vs Jitendra Kumar - 2009 (2) T.A.C. 407 Allahabad

3. Oriental Insurance Co. Vs Mohd. Wasim & ors.- 2009 A.I.C.C. 949

(Delivered by Hon'ble Abdul Moin, J.)

1. F.A.F.O. Nos.37 and 39 of 2022 have been filed against the impugned award dated 21.10.2021 passed by the learned Motor Accident Claims Tribunal, Lakhimpur Kheri.

2. Since all the aforesaid appeals involve common question of law and facts as such they are being decided by a common order. However, the facts of □□F.A.F.O. No.37 of 2022 are being taken into consideration for deciding the appeals.

3. Heard Satyajit Banerji, learned counsel for the appellant and Sri Satendra Nath Rai, learned counsel for the respondents no.1 to 5.

4. Despite respondents no.6 and 7 having been served nobody has put in appearance on their behalf. Accordingly, the Court proceeds to hear and decide the matter.

5. Under challenge is the judgment and award dated 21.10.2021 passed by the learned Tribunal in Motor Accident Claim Petition No.54 of 2016 in re: Reetu Devi and others vs. Bus Owner Kamaljeet Singh and others, whereby the learned Tribunal has awarded a sum of Rs.12,85,000/- against the appellant Insurance Company.

6. F.A.F.O. Nos.125 and 126 of 2022 have been filed by the claimants praying for enhancement of the amount as awarded by the learned Tribunal in the said appeal. Despite service on the respondents nobody has put in appearance although Sri Satyajit

Banerji, learned counsel, has put in appearance on behalf of the Insurance Company in the connected appeals also.

7. Bereft of unnecessary details, the fact set forth by the learned counsel for the appellant is that an accident is said to have occurred on 08.01.2016 which resulted in death of Sri Vijay Prakash Shukla and one Ram Surat. The accident had occurred when both of them were going on a motorcycle and were hit by a bus having registration no.UP 31 T 3800 which bus was being driven rashly and negligently.

8. The learned Tribunal had framed various issues of which issue no.3 was as to whether on the date of accident the said bus was insured with an insurance company.

9. The learned Tribunal examined the facts which were that a cheque had been issued by the owner of the vehicle to the insurance company for issuance of an insurance policy on 20.11.2014. The policy had been issued on 28.11.2014. The validity of the policy was from 27.01.2015 to 26.01.2016. Incidentally the cheque that had been given by the owner of bus was dishonoured as emerged in the system of the insurance company on 07.01.2015. The policy was cancelled on 09.01.2015. Notice with regard to cancellation of the policy was issued to the holder of the policy on 11.02.2015. □

10. The learned Tribunal thereafter was of the view that in terms of Section 147 of the Motor Vehicles Act, 1988, the information was to be sent within a period of seven days by the insurance company pertaining to cancellation of the policy and the same not having been done therefore it should be deemed that on the date of accident the vehicle was insured. The

insurance company was held liable for paying the awarded amount and to recover from the owner.

11. The argument of Sri Banerji is that once the insurance policy itself did not come into effect consequently there cannot be any occasion for the insurance company to first pay the amount to the claimants and thereafter recover the same from the owner.

12. In this regard, learned counsel for the appellant has placed reliance on the judgment of Hon'ble Supreme Court in the case of **United India Insurance Co.Ltd. vs. Laxamma and others - AIR 2012 SC 2817** to argue that the Hon'ble Supreme Court while considering similar circumstances has held that where a cheque has been dishonoured and before the accident of the vehicle occurs and in case the insurance company cancels the policy of the insurance and sends intimation thereof to the owner then the insurance company's liability to indemnify the third party would cease.

13. The argument is that learned Tribunal has failed to consider the judgment of Hon'ble Supreme Court in the case of **Laxamma (supra)** rather has placed reliance on the judgment of Delhi High Court passed in the case of **Oriental Insurance Company vs. Mohd. Wasim and others - 2009 A.I.C.C. 949** as well as the judgment of this Court in the case of **National Insurance Company Ltd. vs. Jitendra Kumar - 2009 (2) T.A.C. 407 Allahabad**, to hold otherwise.

14. It is thus contended that considering the judgment of Hon'ble Supreme Court in the case of **Laxamma (supra)**, it is apparent that the award passed by the learned Tribunal so far as it

directs the insurance company to make the payment and thereafter recover from the owner is liable to the set-aside and there would not be any liability of the insurance company to pay any amount.

15. On the other hand, Sri Rai, learned counsel for the respondents/claimants, does not dispute the aforesaid proposition of law of Hon'ble Supreme Court in the case of **Laxamma (supra)**. However, he states that as the claimants have also prayed for enhancement consequently this Court may consider the enhancement of the awarded amount.

16. Having heard learned counsels for the parties and having perused the records, it emerges that an accident is said to have occurred on 08.01.2016 which resulted in the death of Sri Vijay Prakash Shukla and Sri Ram Surat who were hit by a bus. Upon filing of the claim application, learned Tribunal framed issue no.3 which was as to whether on the date of accident the bus was insured.

17. In this regard, the insurance company indicated that a cheque had been given by the owner for issuance of the insurance policy on 20.11.2014. The policy had been issued on 28.11.2014. The validity of the policy was from 27.01.2015 to 26.01.2016. Incidentally, the cheque, which was issued by the owner for issuance of the policy, was dishonoured which was indicated in the system of the insurance company on 07.01.2015. Immediately the policy was cancelled on 09.01.2015 and an information in this regard was sent to the holder of the insurance policy/insured on 11.02.2015.

18. As the accident occurred subsequent to the cancellation of policy and an information being sent to the insured consequently there would not be any liability of the insurance company as has been urged by the learned counsel for the appellant.

19. In this regard, it would be suffice to refer the judgment of Hon'ble Supreme Court in the case of **Laxamma (supra)** wherein the Hon'ble Supreme Court has held as under:-

*"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."*

(emphasis by Court)

20. From perusal of the judgment of Hon'ble Supreme Court in the case of **Laxmamma (supra)** it emerges that the Hon'ble Supreme Court has held that where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of a cheque paid towards the 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 the awards of compensation in respect thereof.

21. From perusal of the judgment of Hon'ble Supreme Court in the case of **Laxmamma (supra)** it clearly emerges that in the instant case also the accident is said to have occurred on 08.01.2016 and the policy which had been issued on 28.11.2014 was cancelled on 09.01.2015 and the intimation to the insured was sent on 11.02.2015 i.e. the policy having been cancelled and the holder having been informed are all events which took place prior to the accident consequently there cannot be any occasion for an insurance policy to have subsisted on the date of accident i.e. 08.01.2016 and as such, the insurance company cannot be held liable to pay the amount at the first instance and to recover from the owner.

22. However, this aspect of the matter has not been considered by the learned Tribunal while passing the impugned award dated 21.10.2021.

23. Keeping in view the aforesaid discussion, the appeal is allowed. The award impugned dated 21.10.2021 as passed by the learned Tribunal in M.A.C.P. No.54 of 2016 in re: Reetu Devi and others vs. Bus Owner

Kamaljeet Singh and others, is set-aside. The matter is remitted to the learned Tribunal to decide the matter afresh keeping in view the observations made above.

24. Learned Tribunal shall endeavour to decide the claim application within a period of three months from the date a certified copy of this order is placed on record without granting unnecessary adjournments.

25. Needless to mention that due opportunity of hearing shall be accorded to all the parties before the learned Tribunal.

26. So far as the appeals filed by the claimants praying for enhancement i.e. F.A.F.O. Nos.125 and 126 of 2022 are concerned, the same also stand disposed of leaving it open to the claimants to raise any argument or pleading pertaining to enhancement of compensation which would be considered in accordance with law by the learned Tribunal.

27. The statutory deposit before this Court as well as the amount deposited before the learned Tribunal shall be refunded to the insurance company within four weeks.

28. Let the trial court record be returned as per procedure.

-----  
(2025) 5 ILRA 1759

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: ALLAHABAD 08.05.2025**

**BEFORE**

**THE HON'BLE KSHITIJ SHAILENDRA, J.**

Civil Misc. Review Application No. 27 of 2025

**Premwati & Ors.**

**...Applicants**

**Versus**

**Mihilal Sharma & Ors.**

**...Respondents**