

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 757 of 1999

Appellant :- The New India Assurance Co.Ltd.

Respondent :- Mohan Lal Bhardwaj And Others

Counsel for Appellant :- Vinod Swarup

And

Case :- FIRST APPEAL FROM ORDER No. - 758 of 1999

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Respondent :- Mohan Lal Bhardwaj And Others

Counsel for Appellant :- Vinod Swarup

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the appellants.
2. Since, these two appeals arise out of same accident and involve common issues, therefore, both the appeals are being decided together with this common judgement.
3. Both the aforesaid appeals have been preferred by the appellant-insurance company against the award dated 31.05.1999 passed by the Motor Accident Claims Tribunal, Meerut (hereinafter referred to as 'Tribunal') in MAC No.166 of 1991 and MAC No.165 of 1991.
4. For convenience, the facts are being delineated from F.A.F.O. No.757 of 1999.
5. Challenging the award, learned counsel for the appellant has contended that the owner of the offending vehicle i.e. bus No.UAR/8134 issued a cheque on 28.11.1990 drawn on Mercantile Cooperative Bank towards premium of the policy.

The cheque issued by the owner of bus was dishonoured and due intimation was given to the appellant insurance company with respect to dishonour of the cheque. It is submitted that the appellant insurance company cancelled the insurance policy by issuing notice dated 14.01.1991 and notice of cancellation of insurance policy was served upon the owner. Accordingly, it is submitted that the owner had due knowledge about the cancellation of insurance policy and despite that he did not get the offending vehicle insured by paying premium. It is submitted that there was no valid policy in respect to offending vehicle on the date of accident. Accordingly, it is submitted that the insurance company cannot be made liable to pay compensation.

6. Be that as it may, the record reveals that the insurance company did not establish the mode of service of the notice of cancellation of insurance policy upon the owner of the offending vehicle. Accordingly, the Court put a query to learned counsel for the appellant to show as to how the service of notice of cancellation of insurance policy was effected upon the owner, but despite his best endeavour he could not demonstrate from the record that any registered postal receipt or any other document was filed on record to establish that notice of cancellation of insurance policy was sent to the owner. However, learned counsel for the appellant has impressed upon the finding of the tribunal in deciding the issue of insurance policy that normal proof of service in respect to notice was waived subject to legal objection. Thus, it is contended that this finding reflects that notice was served

upon the owner inasmuch as no objection was raised by the opposite party with regard to notice.

7. This Court does not find substance in the submission of learned counsel for the appellant inasmuch as the insurance company in order to avoid its liability has to establish that the notice of cancellation of insurance policy was duly served upon the owner. In the instant case, there is no evidence on record indicating the mode by which the notice of cancellation of insurance policy was served upon the owner. Since, the insurance company failed to demonstrate that the notice was served upon the owner, therefore, this Court does not find good ground to interfere with the finding of the tribunal on issue No.3 in respect to liability of insurance company for payment of compensation. Accordingly, the submission of learned counsel for the appellant is rejected.

8. For the reasons given above, the appeal lacks merit and is **dismissed.**

Order Date :- 2.11.2023

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