THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.No.1294 of 2005

JUDGMENT:

This appeal is preferred by the second respondent in O.P.No.1437 of 2001 on the file of the Chairperson, Motor Accidents Claims Tribunal (IV Additional District Judge, II FTC) at Nalgonda, against the award passed in the said petition on 10.02.2005.

Respondent Nos.1 to 6 herein filed the aforesaid claim petition claiming an amount of Rs.2,00,000/- on account of the death of one Ontepaka Ibrahil - husband of claimant No.1, father of claimant Nos.2 to 4 and son of claimant Nos.5 and 6, in a motor accident that occurred on 16.10.2001. When the deceased started from Vishnupriya Stone Polish industry in order to go to nearby Veerabhadrapuram village to bring milk by walk and when he reached bus stage of Veerabhadrapuram, a lorry bearing No.AP 26 T 8722 coming from Miryalguda side and going towards Dachepalli side hit the deceased who was walking on extreme left side of the road. The first respondent in the claim petition remained *ex parte* and the second respondent therein – being the insurer of the vehicle, filed the counter and contested the case. The Tribunal held that the accident occurred due to rash and negligent driving of the driver of the lorry and, accordingly, awarded an amount of Rs.1,90,000/- with interest at 8% per annum from the date of the petition till the date of award and at 6% per annum from the date of award till the date of deposit or realization.

The only point raised by the learned Counsel for the appellant is that since the cheque issued for the payment of premium for the insurance policy was bounced, it should be assumed that there was no insurance coverage for the accident vehicle. The Tribunal has taken that aspect of the matter into consideration and observed that the premium of Rs.14,289/- was paid by cheque bearing No.171589, dated 15.10.2001, by the first respondent in the claim petition in favour of the second respondent therein. But, when the said cheque was presented for realization, it was returned on 16.10.2001 through a memo stating that the funds were insufficient. Based on the dishonour of the cheque, the policy was cancelled from inception and it was intimated to the Road Transport Authority office with a copy to the first respondent in the claim petition. Ex.B1 – original cheque, was produced before the Tribunal along with Ex.B2 – Memo issued by the bank and Ex.B3 – attested copy of letter addressed to Road Transport Authority, Hyderabad. In the cross examination, R.W.1 stated that they had not taken any legal action against the first respondent in the claim petition for dishonour of the cheque and also admitted that they had not filed any acknowledgement receipt in proof that the first respondent therein had received Ex.B3. In those circumstances, it was held that, it was not proved that the second respondent in the claim petition had intimated about the cancellation of insurance policy to the first respondent therein. The insurance policy under Ex.B4 was deemed to have been valid covering the accident which occurred on 16.10.2001. It is clear that the accident occurred on 16.10.2001 and the intimation was sent on 29.10.2001. There is no proof of sending the notice to the first respondent therein.

In the circumstances, the finding recorded by the Tribunal that the insurer was also liable to pay the compensation along with the owner cannot be found fault and, accordingly, the appeal is dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

13.11.2015

vs

_