***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+MACMA No.2025 OF 2007

% Dated 23.01.2015

Between:

 # The United India Insurance Company Limited ...appellant-2nd respondent

and

$ Golla Nattala Gopal ….1st Respondent-claimant

R.E.Nagaraju, ….2nd respondent

! Counsel for the Appellant : Sri A.Ramalingeshwara Rao

^ Counsel for respondent No.1 : None
Counsel for the respondent No.2 : None

< GIST : ---

>HEAD NOTE : ---

? Cases referred: **:**

[1] 2001 ACJ 638=2001(3)SCC-151
2. *(3)* 2008(1) SCJ 186 = 2008 ACJ 581
3. *(4) 2010 ACJ 1107*
4. *(5) 2012 (1) An.W.R. 631=2011 (3) ALT 5 (A.P.) – 2011 (4) ALD 254*
5. (Civil Appeal No.3589 of 2012)-2012(5)SCC 234
6. 2001(2) ALD 65
7. (2004) 13 SCC 224=2004-SAR(civil)-290

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.2025 of 2007

JUDGMENT:

The United India Insurance Company Limited-2nd respondent of the claim petition-Insurer filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal–cum-Principal District Judge, Kurnool, (*for short, 'Tribunal')* in M.V.O.P.No.903 of 2005 dated 28.03.2007 filed by 1st respondent herein-claimant under Section 166 of the Motor Vehicle Act, 1988 *(for short, 'the Act')*, awarding compensation of Rs.75,000/- Rupees seventy five thousand only) as against the claim of Rs.4,00,000/-(Rupees four lakh only) with joint liability; with the contentions in the grounds of appeal that the award of the tribunal is contrary to law, facts and circumstances of the case, that the tribunal ought to have held that the Insurance company is not liable to pay the compensation in case of dishonour of cheque given towards premium amount, that the tribunal failed to consider the Ex.B.4 (postal receipts) while rendering its decision, that the tribunal should have seen that insurer has issued communication to the insured with regard to the cancellation of policy, that the tribunal should have seen that the Insurer need not communicate the cancellation of policy to the transport authorities, that the other reasons assigned by the tribunal for awarding of Rs.75,000/- are neither sustainable in law nor proper and hence to set aside the award by allowing the appeal. The learned counsel for the appellant/2nd respondent-Insurer reiterated the same during course of arguments.

2. Whereas the 1st respondent-claimant and 2nd respondent-owner of the crime vehicle of the appeal though served with notice called absent with no representation, taken as heard both the respondents for their absence to decide on

merits and perused the record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. Now the points that arise for consideration are:-

1) Whether the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal–cum-Principal District Judge, Kurnool, (*for short, 'Tribunal')* in M.V.O.P.No.903 of 2005 dated 28.03.2007 in fixing liability on the Insurer along with owner of the crime vehicle, is not sustainable if so, whether the insurer is liable to be exonerated, with what observations?

2) To what result?

Point No.1:

4. Before discussing the facts, it is necessary to examine the position of law on this issue of bounced cheque leading to the cancellation of the policy and its effect on the liability of Insurer to indemnify third party risk:

4-A. In ***National Insurance Co. Ltd. v. Seema Malhotra***[1], a cover note was issued when the insured issued a cheque towards premium. The cheque subsequently stood dishonored. The insurer cancelled the policy with immediate effect. However, even before the cancellation of the policy, the vehicle was involved in an accident. The Supreme Court held that the policy was never in force, as the cheque issued by the insured was only a promise to pay money and that when the promisee had not been fulfilled, the insurer need not perform its part of the promise. The Supreme Court also considered that the policy itself was an agreement and when the insured did not pay the premium, such a policy would become an agreement without consideration void.

4-B. In ***Daddappa Vs. Branch Manager, National Insurance Co.Limited***[2] cheque issued towards premium that was dishonoured and the insurer cancelled the policy and informed the same not only to the insured but the R.T.O. as well. The accident occurred long after the communication of the cancellation of the policy. The Supreme Court held that the insurer is not liable, however, invoked Article 142 of the Indian Constitution of India keeping the economic condition of the claimants into consideration and directed the insurer to pay and recover.

4-C. In **Munagala Srinivasa Rao v. *Rajendra Singh***[3]*,* the premium paid *through a cheque could not be realized, as the cheque was dishonoured. The insurer* cancelled the policy prior to the date of the accident and sent intimation through a letter to the insured and even no proof of service filed, it was drawn presumption of due service from registered notice sent. Thus, the Court held that the insurer was not liable, as the policy was cancelled prior to the accident.

4-D. In ***National Insurance Co.Ltd., Ongole v. Oburi (Oguri)Uma Maheswara Rao***[4]*,* cheque issued towards premium of the policy was when dishonored, the insurer cancelled the cover note. The accident occurred about 10 months after the cancellation of the cover note. The fact of the insured did not receive the notice (returned with endorsement of no such addressee) of cancellation of the policy on the ground of dishonor of the cheque was held to be no ground to fasten the insurer with liability, when the insurer established that notice of the cancellation was sent to the insured. This Court held that it is deemed to be valid service. On the strength of these decisions, it is contended by the insurer that the policy was repudiated by the insurer and that insurer, consequently, is not liable to the claim, when the accident was subsequent to the repudiation of the policy.

4-E. In ***United Insurance Company Limited v. Laxmamma***[5] it was by referring to *Seema Malhotra(supra),* held that the policy/cover note issued by the insurer subsists unless the policy is cancelled by the insurer and the intimation of such cancellation had been received by the insured before the accident. In the absence of proof regarding the communication of the cancellation of the policy by the insurer to the Insured-respondent, so far as the claimant who is third party to the policy is concerned, the policy holds good. Thus, the insurer is not entitled to seek exemption from liability where it failed to show that the cancellation of the policy was informed to the Insured-respondent. Where the appellant-Insurer shows that the repudiation of the policy was communicated to the Insured-respondent before the accident occurred, from the policy ceases its force, the Insurer`s liability to indemnify third parties also ceases.

5. From the above propositions of law, now coming to the facts with reference to the contention of the Insurer-appellant for non-liability, the R.W.1 is the Senior Assistant of the Insurer and the Insurer placed reliance upon Exs.B.1 to B.8. Ex.B.1 is the receipt dated 31.08.2000 passed by the Insurer to the vehicle owner acknowledging the receipt of the cheque bearing No.236679 for Rs.3,163/- to issue policy No.37456 to insured vehicle. Ex.B.2 is the letter of insured dated 27.09.2000 to the owner of the vehicle regarding cancellation of the motor cover note No.240858, dated

30.08.2000 for the TATA lorry No.AP21U 4113,policy No.051102/3/02/11/37456/2K intimating that the cheque bearing No.236679 dated 30.08.2000 covered by Ex.B.1 receipt dt 31.08.2000 is dishonoured and the insurance cover provided under the document stands cancelled automatically from inception and the Insurer will not be liable thereunder, hence to return immediately. The policy/cover note/certificate/original receipt for cancellation and in case he shows holds the risk covered immediately by remitting the amount of Rs.3200/- by insured or by bank draft payable at Nandhyal towards the premium including bank charges of the dishonoured cheque and therefrom also it is being effective of the policy from the date of receipt of the amount. Ex.B.3 is the another letter of the Insurer dated 27.09.2000 of the policy stands cancelled from inception since the cheque issued supra was returned dishonoured, Ex.B.4 is the postal receipt of sending of the letters by registered post dated 27.09.2000 bearing RLAD No.A 5067, Ex.B.5 is the policy effective from 31.08.2000 to 30.08.2001 stands cancelled pursuant to Exs.B.1 and B.2, Ex.B.6 is the dishonoured cheque issued by the owner of the vehicle referred supra dated 30.08.2000 for Rs.3163/- in the name of the address of the Insurer(payee), Ex.B.7 is the cheque return memo and Ex.B.8 is the memo of collection charges for the cheque presented and sent for collection of a sum of Rs.45/-. The 1st respondent to the claim petition no other than the owner of the vehicle did not choose to contest before the tribunal having remained exparte. In the cross-examination of R.W.1 with reference to Exs.B.1 to B.8 supra by the claim there is nothing to say the Insurer to be made liable and the policy subsists. The insurer, thus, established that the cheque issued towards premium stood bounced-vide Ex.B6-8, which are the dishonoured cheque with cheque return memo and collection charges memo. As detailed supra, it is natural for the insurer to cancel the policy Ex.B5. After the Ex.B3 letter canceling the Ex.B.5 policy from date of issue for the premium paid through cheque has not been realized as stated in Ex.B.2 cancelling the policy. The insurer could show that Ex.B.3 letter cancelling the policy was sent to the insured-owner of the vehicle by producing registered post receipt Ex.B4 though no acknowledgement filed, to say there is presumption of due service of the registered letter canceling policy under Section 27 General Clauses Act and Section 114 of the Indian Evidence Act for notice sent to same address in the policy, to say insured not availed opportunity to pay the premium through cash or otherwise to keep the policy alive.

6. The tribunal in the impugned order without considering the same held referring to the expression of this Court in **United India Insurance Company Limited, Mukarampura, Karimnagar Vs. Tuniki @ Mudam Lachavva @ Laxmi**[6] showing even the cheque issued on 09.01.2003 for Insurance to the vehicle was dishonoured and cancellation of policy communicated through letter dated 21.01.2003 to the R.T.A. under certificate of posting and the accident later taken place on 21.03.2003 and neither pleaded nor proved that RTA notified the form of cancellation of cover note before the accident occurred to say cover notes or policy issued by appellant was in force as on the date of accident and in the case on hand, there is no acknowledgment card produced for sending of Exs.B.2 and B.3 to the insured (vehicle owner) but for filed Ex.B.4 postal receipt of the same sent by registered post and it is required to be proved of service on the Insured and RTA the cancellation of policy and in the absence of which it can be inferred no communication to the insured and RTA in particular with a liberty to the insured to pay the premium and thereby the insurer is liable to indemnify the insured. In fact, as per the propositions supra in particular from Seema Malhotra(supra), the cover note issued by the Insurer to the insured-vehicle owner of premium paid by the cheque when subsequently dishonoured from which insurer cancelled the policy with a memo effected and even the vehicle was involved in the accident before the cancellation of the policy as the cheque issued by the insured was only on surmises to pay the money and when that was not fulfilled by dishonour, the insurer need not perform past part of the promise when the insured did not pay the amount of premium to say the policy would becomes an agreement without consideration void for no liability of the insurer to indemnify the insured and in Oburi Uma Mohan Rao(supra), this Court held that once there is a registered letter sent by Insurer intimating dishonour of cheque and cancellation of the policy/cover note issued even the same returned with postal endorsement of no such addressee was sent to the particulars furnished by the insured, there is a deemed service and subsequently from the policy refuted by the Insurer by intimation to the insured for the accident took place subsequent to that date the insurer cannot be made liable even to third party claim. Even from Laxmamma(supra) which the latest expression of the Apex

Court scanning the law in holding the policy/cover note issued by the Insurer pursuant to cheque subsists unless the policy is cancelled and the intimation of cancellation has been received by the insured before the accident and for that there could be proof regarding the communication and cancellation of the policy by the insurer to the insured and in the absence of showing cancellation of policy so informed by the insurer to the insured, the insurer cannot be exempted from liability of third party risk. It was therefrom held that it is shown communicated the repudiation of the policy comes into effect and the liability of the Insurer ceases even to indemnify the insured to the third party claim. Here, at the cost of repetition from the factual matrix supra with reference to the law supra when Ex.B.4 registered postal receipt of communication of cancellation of policy under Ex.B.3 filed and deposed by the Insurer dated 27.09.2000 and from the presumption of due service as it is to the same address furnished by the insured for issuing policy, the communication and cancellation of policy covered by Ex.B.3 sent under Ex.B.4 registered postal receipt, from the presumption of due service under Section 27 of the General Clauses Act and under Section 114 of the Indian Evidence Act as discussed supra, there is repudiation of policy from such communication that ceases liability of the Insurer including to the third party claim. The tribunal did not advert all these aspects in fastening liability on the insurer instead of exonerating despite no contest by the Insured by saying there is no communication received and proving the same to rebut the presumption. Accordingly, point No.1 is answered.

Point No.2:

7. In the result, the Appeal is allowed by set aside the Award of the tribunal in M.V.O.P.No.903 of 2005, dated 28.03.2007 to the extent of fastening joint liability against the Insurer along with the owner of the vehicle and by exonerating the insurer from liability. It is made clear that if any amount deposited by Insurer and the same is not permitted to withdraw by the claimant by any order of the Court, Insurer is entitled to take back the same with accrued interest by filing cheque petition and if already permitted and withdrawn any amount by the claimant, the insurer has to recover the same from the owner following the guidelines of the Apex Court in ***Oriental Insurance Company Limited Vs. Nanjappan***[7] by filing execution petition before tribunal. There is no order as to costs. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr.B.SIVA SANKARA RAO, J.

Date: 23.01.2015

Note: L.R.Copy to be marked.
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[1] 2001 ACJ 638=2001(3)SCC-151

[2] *(3)* 2008(1) SCJ 186 = 2008 ACJ 581

[3] *(4) 2010 ACJ 1107*

[4] *(5) 2012 (1) An.W.R. 631=2011 (3) ALT 5 (A.P.) – 2011 (4) ALD 254*

[5] (Civil Appeal No.3589 of 2012)-2012(5)SCC 234

[6] 2001(2) ALD 65

[7] (2004) 13 SCC 224=2004-SAR(civil)-290