HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.2465 of 2015

JUDGMENT:

This appeal is filed by appellant-Insurance Company against the order and decree dated 28-01-2015 in M.V.O.P.No.267 of 2012, wherein the Court below has granted compensation of Rs.7,87,896/- in favour of the respondents 1 to 3 and fixing the liability on the appellant.

The case of the appellant is that respondents 1 to 3 filed MVOP.No.267 of 2012 under Section 166 of Motor Vehicles Act (for short " the Act") read with Rule 455 of A.P.Motor Vehicle Rules claiming compensation of Rs.10.00 lakhs on account of death of one Ragireddi Durga Prasad in a motor cycle accident. It is stated that on 20-04-2011 said Durga Prasad was returning to his Mill on foot from Bazaar and when he reached R.K.Juice shop, one lorry came in a rash and negligent manner and dashed against him. It is stated that immediately the passers-by shifted him to hospital and where he died due to rash and negligent manner of lorry bearing No.AP 07 TT 9269. On that, the Station House Officer, Tadepalligudem registered a case in Cr.No.135 of 2011 under Section 304-A IPC against the 4th respondent herein and the 1st respondent before the Tribunal. The deceased was aged about 45 years hale and healthy, owner of Flour Mill at Tadepallygudem and earning Rs.12,000/- per month and contributing his earnings to family. Respondent No.4 is the driver of the lorry and respondent No.5 is the owner of the lorry. The Tribunal basing on the evidence of Pws1 and 2 and Exs.A-1 to A-3, A-8 and the evidence of RW.1 and Exs.B.1 to B-8 awarded an amount of Rs.7,87,896/- against the respondents 1 to 3 jointly and severally along with interest @ 7.5% per annum from the date of petition till realization.

Learned counsel for the appellant Sri Kota Subba Rao submits that the Insurance policy was issued in favour of respondent No.5 covering the period from 04-04-2011 to
03-04-2012. Since the cheque issued for procuring the policy was dishonoured on 08-04-2011, the policy was cancelled vide Ex.B.4 w.e.f. 04-04-2011 and the same was informed to the 5th respondent owner of the vehicle on 12-04-2011 and also the Regional Transport Authority was informed about the same vide Ex.B.6. The 5th respondent has obtained fresh policy on 25-04-2011 by paying cash under Ex.B.7. The accident occurred on 20-04-2011 after intimation was sent to the 5th respondent on 12-04-2011. He also submits that policy was cancelled and there is

no valid policy as on the date of accident. When there is no valid consideration under the policy, the liability cannot be fixed. As such, the appellant-Insurance Company is not liable to pay compensation. In support of his contentions, he relied on the judgments of **National Insurance Company Limited v. Seema Malhotra and others**[1], **Pradeep Kumar Jain v. Citi Bank and another**[2], **National Insurance Company Limited, Ongole v. Oburi (Oguri) Umamaheswara Rao and others**[3], **Munagala Srinivasa Rao and another v. S.Rajendra Singh and others**[4].

On the other hand, learned Counsel Sri V.V.Satish appearing for the respondents 1 to 3 submits that unless the intimation regarding cancellation of Insurance policy is served on the insured, the appellant cannot be absolved of his liability arising out of the policy covering risk and in this case, the Tribunal rightly found that the appellant was not able to prove that intimation regarding cancellation of policy is served on the owner of the vehicle-5th respondent herein. As such, rightly fixed the compensation by relying on the judgments of **Oriental Insurance Company Limited v. Inderjit Kaur and Others**[5] **and** law laid down in **National Insurance Company Limited, Divisional Office, Eluru v. Sk.Ahmedunnisa and others**[6] and **Reliance General Insurance Company Limited, Hyderabd v. B.Laxmi and another**[7], **United India Insurance Company Limited v. Laxmamma and others**[8], **Reliance General Insurance Company Limited, Hyderabad v. B.Laxmi and another**[9], **V.Ramesh v. Convenor Eamcet, 1995, Jawaharlal Nehru Technological University, Hyderbad**[10], **T.R.Ravi Mohan v. Registrar and Chairman, Selection Committee, A.P. University of Health Sciences and others**[11], **Subodh S.Salaskar v. Jayprakash M.Shah and another**[12], **Manager, United India Insurance Company Limited v. Abbisetti Venkatarao and others**[13] and the judgment of **United India Insurance Company Limited v. Laxmamma and others**[14].

The facts are not in dispute in the present case. Admittedly the 5th respondent obtained renewal of insurance policy covering the risk of offending vehicle by issuing cheque dated 02-04-2011. Basing on which, the insurance policy was issued in favour of the 5th respondent covering the offending vehicle w.e.f.04-04-2011 to 03-04-2012. Letters of State Bank of India, Vijayawada, ING

Vysya Bank dated

08-04-2011 vide Exs.B.2 and B.3 goes to show cheque issued by 5th respondent for obtaining insurance policy was returned on the ground of insufficiency of funds and vide Ex.B.4 the insurance policy was cancelled w.e.f. 04-04-2011. According to the appellant, the same was informed to the insured vide Ex.B.5, dated 12-04-2011 to the 5th respondent as well as to the R.T.A. but no acknowledgment is produced. It is also found that 5th respondent obtained fresh policy vide Ex.B.7 and the accident occurred on 20-04-2011. The appellant has not produced any acknowledgment to show that the 5th respondent-owner of the offending vehicle received information about the cancellation of the policy before the date of accident on 20-04-2011. In **Oriental Insurance Company v. Inderjit Kaur** (5 supra), the Supreme Court held as under:

> " Mr.Sharma relied upon the decision in the case of United India Insurance Co.Ltd. vs Ayeb Mohammed (ibid. The Orissa High Court had upheld the award of compensation in the sum of Rs15,000/- against the insurer on the footing that it had issued a cover note undertaking the risk. The insurers stand was that the cheque covering the premium had bounced and, in the absence of payment, the cover note it had issued had become ineffective and there was no policy which obliged it to pay the compensation. The view of the High Court was that, in the absence of steps to cancel the cover note, the insurers liability continued although the bouncing of the cheque and the steps taken by the insurer cancelling the risk note had, this court said, been found as a fact. The insurer had issued a notice to the registering authority and the parties that the cheque had bounced and the liability had ceased but the High Court had recorded a finding that the notice of cancellation had not been served on the insured. This Court then said:
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> "The fact that the cheque had bounced was a matter within the knowledge of the insured. At any rate, there would be that presumption and, therefore, in ordinary circumstances no special notice would be required.
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> Since Mr.Madan had told us at the commencement of the hearing of the matter that the amount being small he was not interested in disputing the liability to pay in this case but the insurer would like to have the principle of law decided, we do not think it is necessary to issue notice to the respondents.
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> In the setting indicated we are of the view that the High Court was not right in holding that in the absence of steps for cancellation of the cover note, the risk would be subsisting but as Mr.Madan has himself stated, we do not interfere with the decision of the High Court requiring the sum of Rs.15,000/- to be paid by the insurer." We find it is difficult to conclude that the judgment in the case of United India Insurance Company Ltd. vs.Ayeb Mohammed decides a principle of law because no notice had been issued on the special leave petition. At the same time, the opinion is expressed in

the judgment that the High Court was in error in holding that, in the absence of steps to cancel the cover note, the risk would subsist."

In the above cited case the insurance policy was taken on 30-11-89 and letter intimating that the cheque was dishonoured was sent to insured on 23-01-1990 and accident occurred on 19-04-1990 and owner has taken fresh policy on 25-09-1999. The Apex Court held as under:

" The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay against the insured.

We may note in this connection the following passage in the case of Montreal Street Railway Company vs.Normandin, A.I.R.1917 Privy Council 142;

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice go persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.' It must also be noted that is was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64-VB of the Insurance Act. The public interest that a policy of insurance serves must, clearly, prevail over the interest of the appellant."

In **United India Insurance Company v. Laxmamma and others** (8 supra), the Apex Court held as under:

We find it hard to accept the submission of the learned counsel for the insurer that the three-judge Bench decision in **Inderjit Kaur** has been diluted by the subsequent decisions in **Seema Malhotra and Deddappa,. Seema Malhotra and Deddappa** turned on the facts obtaining therein.

In **Seema Malhotra**, the claim was by the legal heirs of the insured for the damages to the insured vehicle. In this peculiar fact situation, the Court held that when the cheque for premium returned dishonoured, the insurer was not obligated to perform its part of the promise. Insofar as **Deddappa** is concerned, that was a case where the accident occurred after the insurance policy had already been cancelled by the insurance company.

In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorized 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 M.V. Act unless the policy of insurance is cancelled by the

> authorized 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 authorized 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.

It was also held that the Insurance company failed to prove that notice was served on the policy holder informing about cancellation. In that case also postal acknowledgments are not marked and the owner was not examined. Xerox copy of entry in the dispatch register is not marked to show that the letter sent to the owner of the policy holder on the ground that intimation about cancellation of policy is served on the policy holder, Insurance Company was made liable. **United Insurance Company Limited v. Laxmammama** (8 supra) was followed in **Reliance General Insurance Company Limited v. B.Laxmi** (9 supra).

In **V.Ramesh v. Convenor EAMCET, JNTU, Hyderabad** (10 supra), a Division Bench of this Court held as under:

> The above, in our view, is the correct statement of the legal consequences of an agent getting involved in carrying a message from one person to another and in the instant case, the telegraph department/postal department was chosen as its agent by the respondent to carry the intimation for delivery to the petitioner-appellant for his appearance at the interview on
> 15-10-1995. The judgment of the Supreme Court in the Common Denominator decisions has been analysed in some details by Janarthanam, J. in his judgment to which Raju, J. has concurred and when we view the facts of this case, we are inclined to conclude unhesitatingly that in the instant case, the lapse of the telegraph department resulting in non-communication of the date for the interview to the petitioner-appellant has to be construed as the lapse of an agent of the respondent and the Principal i.e., respondent must take the responsibility/liability of the lapse of the agent. Going by the above, we have to hold that non-appearance of the petitioner-appellant for the interview on 15-10-1995 has been caused on account of the lapse of the respondent and thus the respondent has the liability to make good the loss caused to the petitioner-appellant. The application of the petitioner-appellant, for the said reason, has to succeed. The respondent has a duty to provide to the petitioner-appellant a seat before the person ranking next to him in order of merit and since persons who have ranked below him have been given free seats, allotment of a payment seat to the petitioner-appellant is not justifiable under any law. In view of the above, the impugned judgment has to be set aside.

In **Manager, United India Insurance Company Limited v. Abbisetti Venkatarao and others** (13 supra), this court held as follows:

"Contract Act (9 of 1872), S.54-Insurance Act (4 of 1938)S.64VB-Performance of reciprocal promise-Contract of Insurance-Cheque issued by insured towards premium dishonoured by Bank for insufficient funds-Policy neither cancelled nor intimation to that effect sent to insured-Insurance Company cannot avoid liability under contract to indemnify loss as they failed to give opportunity to owner of vehicle (insured) to remit premium amount after cheque was dishonoured by bank."

In the present case, the Tribunal relied on the some of the judgments referred to above and came to the conclusion that the 5th respondent was not served with the information canceling the policy and no acknowledgment was produced. The judgments cited by the learned counsel for the appellant do not apply to the facts of the case. In view of the same, I do not see any reason to interfere with the order and decree passed by the Tribunal.

Accordingly, the Appeal is dismissed. As a sequel to the disposal of this appeal, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

03-12-2015
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[1] 2001 ACJ 638
[2] 1999 (5) ALT 14 (SC)
[3] 2011(4) ALD 254
[4] 2009(4) ALD 711
[5] (1998) 1 Supreme Court Cases 371
[6] 2008(5) ALD 575 (DB)
[7] 2013(1) An.W.R.948(A.P)
[8] (2012) 5 Supreme Court Cases 234
[9] 2013(2) ALD 418
[10] 1997 (1) ALD 126 (D.B.)
[11] 1997(1) ALD 128 (D.B.)
[12] (2008) 13 Supreme Court Cases 689
[13] AIR 2008 A.P. 8
[14] 2012(4) ALD 165 (SC)