HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.3728 of 2004

JUDGMENT :

The 2nd respondent-insurer, in the claim petition, filed this appeal having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal–cum-Additional District Judge, Hindupur, (*for short, 'Tribunal')* in M.V.O.P.No.20 of 2000 dated 19.04.2004, awarding compensation of Rs.2,82,136/- with interest at 6% per annum as against the claim of the claimants 1 to 3, wife, minor son and the mother of the deceased, of Rs.4,00,000/-, in the claim petition under Section 166 of the Motor Vehicle Act, 1988 *(for short, 'the Act')*.

2. Heard Sri E.Venu Gopal Reddy, the learned standing counsel for the appellant and Sri O.Manohar Reddy, learned standing counsel for the claimants. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. The contentions in the grounds of appeal by the appellant-insurer that the decree and award of the Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal ought to have held that the lorry bearing No.AP 2V 485 was not negligent and responsible for the accident, that the Tribunal ought to have held that the deceased Babu Jan was negligent in stopping the vehicle and sleeping on the road which is a national highway without keeping any identification marks, that the Tribunal ought to have held that the owner of the vehicle was not having any valid coverage of insurance as on the date of accident as no consideration was paid towards premium, that the Tribunal ought to have held that the appellant insurance company not liable since no consideration was received and the cover note was duly cancelled as per law, that the Tribunal ought to have appreciated the evidence of R.W-1 who categorically stated that the lorry was not covered by any insurance on the date of accident, that the tribunal ought to have held that the appellant insurance company is not liable to pay the compensation to the claimants as the owner of the vehicle failed to obtain any insurance policy as on the date of accident as per provisions of the Act, that the tribunal ought to have appreciated the evidence of R.W-1 and Ex.B-1 to B-6 and dismissed the claim against appellant-insurance company, that the Tribunal ought to have seen that the cover note was cancelled on 17.11.1998 much prior to the date of accident i.e., 15.08.1999, that the tribunal ought to have held that the respondent claimants for entitled to claim compensation against the employer of the deceased i.e., the owner of the lorry bearing No.AP 2 V 1997 and prayed to allow the appeal by setting aside the award of the Tribunal. Whereas learned counsel for the Claimants contended that the Tribunal is right in awarding the compensation and for this Court, there is nothing to interfere and hence to dismiss the appeal with costs if not to enhance the compensation for want of cross-objections.

4) Now the points that arise for consideration in the appeal are:

1. *Whether the policy subsists as on the date of accident, if not whether the award of the Tribunal fixing joint liability on the insurer pursuant to the policy is unsustainable and requires interference by this Court while sitting in appeal and if so, to what extent and with what observations/conclusions?*

2. *To what result?*

POINT No.1:

5) The proved facts before the Tribunal are that the accident

occurred due to rash and negligent driving of the driver of the crime lorry and for this Court while sitting in the appeal there is nothing interfere to that extent.

6) In ***United Insurance Company Limited v. Laxmamma***[1] it was by referring to ***National Insurance Co. Ltd. v. Seema Malhotra***[2], 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.

7) From the above propositions of law, coming to the facts among Exs.B-1 to B-6 placed reliance by the learned counsel for the insurer through their witness R.W-1 K.C.P.Naik, there is nothing to show the cancellation of the policy is intimated to the insured before the date of accident dated 15.08.1999, though claimed the policy was cancelled and letter was addressed on 17.11.1998. Undisputedly there is no proof about sending of the notice for giving any credence to Exs.B-4 and B-5 as rightly concluded by the Tribunal and as such from the law well settled in this regard that unless the policy is cancelled and intimated before the accident, the insurer's liability to the third party cannot be avoided and nothing to interfere with the

award of the Tribunal. If at all the insurer got any remedy against the insured, it is left open otherwise. Accordingly, point No.1 is answered.

POINT No.2:

8) In the result, the appeal is dismissed. No order as to costs.

9) Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 23-01-2015
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[1] (Civil Appeal No.3589 of 2012)-2012(5)SCC 234

[2] 2001 ACJ 638=2001(3)SCC-151