HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.1507 of 2011
AND/ IN
MACMA No.2915 of 2015

COMMON ORDER:

Impugning the award of the Tribunal passed on 08.09.2010 in O.P. No.289 of 2009 on the file of the Motor Accidents Claims Tribunal–cum – IX Additional District & Sessions Judge, at Kamareddy, filed by the claimant under Section 166 of the M.V Act for Rs.3 lakhs since the Tribunal awarded Rs.81,880/- with interest at 7.5% per annum from the date of petition till the date of realization fixing liability against respondents 1 and 2 i.e., owner and insurer of the lorry bearing No.KA 38 1897, the 2nd respondent—insurer maintained the appeal with delay condonation application to condone the delay of 91 days in filing the appeal, showing claimant and owner of the lorry as respondent Nos. 1 and 2.

2) The 2nd respondent—owner of the lorry remained ex parte before the Tribunal and even impleaded in the appeal dismissed for default vide order dated 13.03.2015, and the same is no way fatal to the maintainability of the appeal vide ***Meka Chakra Rao vs Y.Babu Rao***[1] and the same is recorded.

3) Heard, the delay is condoned. At request of both parties, the appeal is taken up for hearing.

4) The main contentions of the insurer in the grounds of appeal are that the Tribunal ought to have seen the cancellation of the cover note and insurance policy vide Ex.A12 against Ex.B4 based on cheque and in the payment otherwise, as the cheque Ex.B6 bearing No.20278 dated 22.11.2002 and when the same was presented, returned as dishonoured on 17.12.2002 vide Ex.B7—dishonoured memo and Ex.B8—C.C. of pay slip, dated 25.11.2002 respectively and even

under Ex.B3—registered letter dated 14.01.2013 addressed to the injured intimating the cheque was returned as dishonoured, thereby to pay the amount else to cancel the policy and the said notice sent by Registered post vide Ex.B14 postal receipt dated 15.01.2003 retuned as refused under Ex.B13 on 20.01.2013 and thus there is sufficient compliance for the intimation of the dishonour of the cheque and cancellation of the policy, consequently from non-payment even after intimation of dishonour of cheque and the accident was dated 17.11.2003, which is more than nearly 11 months after the said intimation of the dishonour of the cheque and non-payment of the policy to honour or to continue since cancelled, thereby the Tribunal gravely erred in fixing joint liability on the insurer, hence to allow the appeal to exonerate the insurer.

5) Whereas it is the contention of the learned counsel for the claimant/ 1st respondent to the appeal that the award of the Tribunal holds good and there is no proof of intimation as contemplated by law and there is no presumption that can be applied and once the policy issued and the alleged cancellation not correct to indemnify by the insurer the third party injured claimant at best to recover from the owner, thereby sought for dismissal.

6) Heard perused the material on record.

7) The law is fairly settled by expression of the Apex Court in ***United India Insurance Company Limited vs Laxmamma and others***[2] so far as the compliance required under the statutory provisions under Section 64-V B of the Insurance Act, 1938 with reference to policy cover note and with reference to Sections 146 to 149 of the M.V. Act once there is dishonour of cheque and intimation about the dishonour of cheque and cancellation of policy that is sufficient compliance for which the insurer exonerating the liability to indemnify the insured for any claim.

8) So far as the service of notice concerned, Exs.B3, B13 and B14 coupled with evidence of RW.2 in particular leave about RW.1 is crystal clear of the cheque dated 22.11.2002 presented, dishonoured and notice issued canceling the cover note/ policy dated 14.01.2013 by registered post and Ex.B14—receipt dated 15.01.2003 and the cover is returned refused under Ex.B13 (it appears dated 20.01.2003) and thereby once the policy cancelled by intimating the insured about the dishonour of the cheque there is no liability on the Insurance Company.

9) This Court referring to the Laxmamma (supra) and also subsequent other expressions of this Court in another bench ***National Insurance Co.Ltd., Ongole v. Oburi (Oguri)Uma Maheswara Rao, Munagala Srinivasa Rao v. Rajendra Singh*** and ***United India Insurance Company Limited vs Golla Nattala Gopal***[3] referring the same in MACMA No.2025 2007 dated 23.01.2015 categorically held that the presumption under Section 27 General Clauses Act and Section 114 of the Evidence Act notice sent to the same address as to the deemed service or deemed intimation from the cover duly addressed to the address furnished by the insurer and registered post receipt filed about the intimation as a deemed service to rebutt the presumption by the insured. In this case, it is the claim that the insured failed to attend much less disputed the said contention of the insurer. Apart from it, the record shows there is refusal of the registered cover which is nothing but deemed service and thereby, there is no policy in force much less to indemnify the insured to a third party claim as on the date of accident on 17.11.2003 for the cancellation was effected after service of the registered notice vide Ex.B13 refused cover dated 20.01.2003.

10) Having regard to the above, the Tribunal gravely erred in fixing joint liability against insurer. No doubt, in the expression

Laxmamma supra at para No.28, the Apex Court observed that while confirming the High Court observation the insurer liability is to be exonerated whatever the amount paid by the insurer so far as to the claimant paid or deposited or permitted to withdraw by the claimant, the insurer is entitled to recover from the insured.

11) Having regard to the above and in the result, the appeal is partly allowed setting aside the award of the Tribunal fixing the joint liability on the insured by exonerating the insurer. However, to the extent of whatever the amount deposited not withdrawn, to be returned to the insurer and whatever amount deposited and withdrawn to recover from the insured and not from the claimant. There shall be no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

29.12.2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date:29.12.2015

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[1] 2001 (1) ALT 495 DB

[2] 2012 (5) SCC 234

[3] 2010 (4) ACJ 1107