THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1251 OF 2005

JUDGMENT:

The instant appeal is preferred by respondent No.2 – New India Assurance Company Limited in M.V.O.P.No.146 of 2003 on the file of Chairman, Motor Accidents Claims Tribunal – cum – Family Court, Secunderabad, challenging the order and decree, dated 21.03.2005, passed in the said O.P., whereby and whereunder, the Tribunal has granted a sum of Rs.2,55,000/- as compensation for the death of one Shaik Basheer and fastened liability on both the insured and the insurer.

2. The appellant – Assurance Company is respondent No.2, whereas respondent Nos.1 to 4, who are the wife, daughter, mother and widowed sister of the deceased Shaik Basheer, are the petitioners and respondent No.5, owner of the offending vehicle, is respondent No.1 in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The fact situation would show that on 11.05.2003

at about 03:45 PM, when the said Shaik Basheer was proceeding on foot towards the open space near ACE Godowns at Bowenpally to attend the calls of nature, a lorry bearing registration No.GJ-2-T-9298 driven in a rash and negligent manner at high speed dashed him due to which he fell down and the wheels of the lorry ran over his head causing instantaneous death. The Station House Officer, Bowenpally Police Station, registered a case in Crime No.166 of 2003. The petitioners, claiming that they are the wife, daughter, mother and widowed sister of the deceased and were dependants on the deceased, sought a sum of Rs.6,00,000/- as compensation under Section 166 of the Motor Vehicles Act, 1988.

5. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 opposed the claim raising a specific plea that Cover Note No.317856 issued by the Insurance Company in lieu of policy No.451302/31/02/01943 for the period from 10.07.2002 to 09.07.2003 was cancelled on 22.07.2002 vide Endorsement No.31/02/40057 due to dishonour of premium cheque and thereafter also, no fresh premium was paid by respondent No.1 – insured for regularization of the policy and therefore, sought to dismiss the claim petition against it.

6. Based on the said pleadings, in the direction of

accounting for responsibility about the accident, the Tribunal has framed the following three issues:

> "1. Whether the accident taken place due to rash and negligent driving of the lorry bearing No.GJ 2T 9298?
> 2. What is the just amount that can be awarded as compensation and against whom?
> 3. To what relief?"

7. During enquiry, petitioner No.1 besides examining herself as PW.1, examined one Rafiq Khan, an eye witness to the occurrence, as PW.2 and marked Exs.A1 to A6 to substantiate the claim laid. On behalf of respondent No.2, the Assistant Manager of the local Branch was examined as RW.1 and marked Exs.B1 to B9 in order to prove that the Cover Note was cancelled and the same was communicated to the insured before taking place of the accident.

8. The Tribunal, on issue No.1, in the light of the evidence let in by the parties, recorded a finding in favour of the petitioners. On issue No.2, the Tribunal, having considered the evidence on record, both, oral and documentary, let in by the petitioners and respondent No.2, and on the ground that respondent No.2 has not filed any document to show that the address mentioned in Ex.B7 – postal acknowledgement, dated 20.07.2002, was given by the insured himself, declined to accede to the specific plea taken by respondent No.2 as to cancellation

of the policy and its communication to the insured, and on determination of compensation at Rs.2,55,000/-, fastened joint and several liability on respondent Nos.1 and 2.

9. Having got aggrieved with the aforesaid order, the Insurance Company preferred the instant appeal mainly contending that the Tribunal went wrong in interpreting the contents in Exs.B1 to B9 and despite the fact that Ex.B7 would reflect that the cancellation of Cover Note was communicated to the insured and the said intimation was received by the insured, still, the Tribunal held otherwise, by recording a finding that the insurer is also liable to pay compensation and thus, sought to exonerate it by setting aside the liability cast on it by the order and decree under challenge in the instant appeal.

10. Heard Sri T. Ramulu, learned Standing Counsel for the appellant. Though the matter is posted to this day for affording an opportunity to hear the learned counsel for respondent Nos.1 to 4 – claimants, there is no representation. Learned counsel for the appellant filed Memo, dated 30.01.2012, stating that he is not pressing the appeal against respondent No.5 – insured, who remained *ex parte* before the Tribunal.

11. Perused the order under challenge.

12. Learned counsel for the appellant would submit

that the Tribunal went wrong in excluding Ex.B7 on the mere premise that no document was filed by the insurer to show that the address mentioned in Ex.B7 was given by the insured himself, but, in fact, while tendering the cheque, the insured furnished his address and to the same address the insurer had to correspond, and in such an eventuality, such a finding recorded by the Tribunal is incorrect, improper and therefore, sought to set aside the order and decree passed by the Tribunal to the extent of fastening liability on the Insurance Company.

13. Perused the documentary evidence, Exs.B1 to B9, and the oral evidence of RW.1. It is not in dispute that the cheque, dated 06.07.2002, issued by the insured was dishonoured and the dishonour advise was also issued by Union Bank of India on 13.07.2002, pursuant to which, the insurer has cancelled the policy by making endorsement, dated 22.07.2002, marked as Ex.B4 and intimation thereof was sent through Ex.B5 – letter, dated 22.07.2002, and the postal receipt thereof would show that the letter was dispatched to the address mentioned therein and Ex.B7 – postal acknowledgement would show the signature of the receiver as respondent No.1, but the Tribunal on the sole premise that no document is filed by the insurer to show that the address mentioned in Ex.B7 was given by the insured himself, rejected that stand,

which appears to be wholly improper for the reason that there would not have been any occasion for the insurer to send the intimation of cancellation of Cover Note to an address, which was not furnished to it. The very fact that Ex.B7 contains the signature of respondent No.1 – insured is sufficient to show that the intimation reached the insured and the insured was absolutely aware of the cancellation of Cover Note.

14. Admittedly, the accident took place on 11.05.2003, slightly about 10 months after the date of cancellation of the policy and its intimation to the insured. Thus, the finding recorded by the Tribunal fastening liability on the insurer, certainly, is not well reasoned and therefore, warrants interference and accordingly, the said finding is liable to be set aside exonerating the Insurance Company from its liability to pay the compensation, as it has no obligation to indemnify respondent No.1, since he cannot be construed as insured at all.

15. Hence, the instant appeal is allowed setting aside the impugned order and decree, dated 21.03.2005, only to the extent of fastening liability on the Insurance Company, but, however, confirming the same in all other aspects.

16. As seen from the proceeding sheet, this Court,

while admitting the instant appeal on 30.06.2005, granted interim stay on condition of depositing half of the compensation amount awarded by the Tribunal including interest and costs within a period of six weeks from that date and thereafter, by order, dated 01.09.2005, in M.A.CMA.MP.No.3161 of 2005 accorded permission to the petitioners – claimants to withdraw the same. Therefore, it is open to the Insurance Company to recover the amount deposited by it from respondent No.1 - owner of the offending lorry rather from the petitioners - claimants. The petitioners – claimants are entitled to recover the balance amount from respondent No.1 – owner of the offending lorry. There shall be no order as to costs.

17. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR NARAYANA, J

March 17, 2016.
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THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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