HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

<u>M.A. C.M.A. No.1520 OF 2005</u>

<u>JUDGMENT</u>:

Aggrieved by the order and decree, dated 07.02.2005, in
O.P. No.131 of 1999 passed by the learned Chairman, Motor Accidents Claims Tribunal (Fast Track Court - I) - cum - II Additional District Judge, Khammam, insurance company preferred the instant Civil Miscellaneous Appeal questioning the liability fastened on it to pay compensation of Rs.62,000/- claimed under Section on the ground that the insurance policy in question was cancelled and communication thereof was sent to the insured.

2. The appellant herein viz., Oriental Insurance Company Limited, Khamma, is respondent No.3 in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are parents of Yetukuri Manoj Kumar, who died in the accident, are petitioners and respondent Nos.3 and 4, who are driver and owner, respectively, of the bus bearing No.TN - 45 - D - 1679 that involved in the accident, are respondent Nos.1 and 2 respectively.

3. For the sake of convenience, the parties are

hereinafter referred to as arrayed in the O.P. before the Tribunal and Manoj Kumar, who died in the accident, as 'deceased'.

4(a) The facts, in brief, are that on 12.12.1998, at about
4.00 p.m., while the son of the petitioners viz., Manoj Kumar, aged about six (6) years, was waiting along with them at Peda Thanda on the left side of the road to board a bus to return to their house, a bus bearing No.TN-45-D-1679 coming from Thallampadu, driven by respondent No.1 in a rash and negligent manner, hit him, due to which he sustained injuries on his head and immediately he was shifted to Government Hospital, Khammam, but, he succumbed to the injuries while he was being shifted.

(b) The Station House Officer, Khammam, registered a case in Crime No.163 of 1998 and laid charge sheet.

(c) Claiming that the deceased was clever, sharp and brilliant having bright future, petitioners sought a sum of Rs.1,00,000/- towards compensation from respondent Nos.1 to 3 jointly and severally.

5. Respondent Nos.1 and 2, driver and owner, respectively, of the bus involved in the accident remained

ex parte before the Tribunal.

6. Respondent No.3, insurer, opposed the claim. It has taken a specific plea that on the date of accident, which occurred on 12.12.1998, insurance policy covering the period from 15.10.1998 to 14.10.1999 was cancelled on 13.11.1998 and the same was communicated to the insured, and, therefore, it has no liability to indemnify the insured.

7. Based on the pleadings, the Tribunal framed the following three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

> "1. Whether the accident took place due to
> rash and negligent driving of the driver of the vehicle ?
>
> 2. Whether the petitioner is entitled to claim any compensation ? If so, to what amount and from which of the respondents?
>
> 3. To what relief?"

8. During enquiry, petitioner No.1, father of the deceased, examined himself as PW.1 and marked Exs.A-1 to A-3. On behalf of the insurer, one Ch. Sunil Kumar was examined as RW.1 and marked Exs.B-1 to B-6 to

prove that on the date of accident, insurance policy already covering the accident period was cancelled and communication thereof was sent to the insured.

9. The Tribunal has taken up all the three issues together for common discussion and held that the accident had occurred due to rash and negligent driving of respondent No.1.

10. Though, the Tribunal made certain observations with reference to the stand taken by the petitioners in connection with the insured not receiving communication of cancellation of insurance policy sent by the insurer, however, mentioning that the Hon'ble Supreme Court in such circumstances observed that the insurer is obliged to deposit the compensation and recover the same from the insured by filing execution petition, held that respondent Nos.1 and 2, driver and owner of the vehicle, alone are liable to pay compensation, and directed the insurer to deposit Rs.62,000/- with interest at 9% per annum.

11. The aforesaid order is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal, somehow, failed to see that the cheque issued by the owner in respect of the insurance policy was dishonoured, and, therefore, the policy was cancelled on 13.11.1998 and the said fact was intimated to the insured by Ex.B-4 letter and the same was acknowledged

by him under Ex.B-5 postal acknowledgement and, therefore, the insurer is not liable to pay compensation. It is also stated that the Tribunal overlooked the fact that the accident had occurred after cancellation of the policy, and, therefore, no obligation was cast on it to indemnify the insured. It is further contended that the Tribunal failed to see that PW.1 had compromised the issue with respondent No.1 and colluded with him in getting him acquitted in the criminal case and in the said circumstances, obviously, he had already received some amount from the driver and the insured, and, therefore, the petitioners are not entitled to receive any compensation from the insurer, and, thus, sought to set aside the order and decree under challenge.

12. Heard Smt. I. Maamu Vani, learned standing counsel for the insurer (appellant).

13. Despite service of notice, none appeared for the petitioners (respondent Nos.1 and 2).

14. In the cause title of the grounds of appeal, respondent No.3, driver of the bus involved in the accident, is shown as not a necessary party to the appeal.

15. The appeal against respondent No.4, owner of the bus involved in the accident, was dismissed for default on 03-01-2012 itself and no steps have been taken by the

insurer.

16. Learned standing counsel for the insurer would submit that in the presence of Ex.B-5, postal acknowledgement of the insured for receipt of cancellation of insurance policy and Exs.B-1 to B-4 and
B-6, would positively prove that the cancellation of insurance policy by the insurer was communicated to the insured before the date of accident and the Tribunal, somehow, went wrong in fastening liability on the insurer despite making observation that driver of the bus was also acquitted on account of compromise between the petitioners, driver and owner of the bus involved in the accident, and, therefore, sought to set aside the order and decree and to exonerate the insurer from the liability fastened on it by the Tribunal.

17. In the instant case, the insurance policy was taken covering the period from 15.10.1998 to 14.10.1999. The policy was cancelled on 13.11.1998, on which day, cancellation of the policy was said to have sent to the insured. During the course of arguments, when the postal acknowledgement marked as Ex.B-5 through RW.1 is verified, it is to be found that it does not bear the signature of the addressee i.e., the insured and when the said fact was brought to the notice of the learned standing counsel for the insurer, she confirms that Ex.B-5 does not bear the signature of the insured nor there is anything in Ex.B-5 to

show that the addressee/insured had made any thumb impression on it in token of receipt of notice/letter sent through it.

18. The learned counsel for the insurer (appellant) would submit that she could notice that Ex.B-5 does not bear signature of the insured and this aspect was not dealt with by the Tribunal and only during the course of arguments having seen Ex.B-5, she noticed it.

19. A perusal of the order impugned would show that the Tribunal has not gone in to this aspect at all.

20. The Tribunal, though, mentioned in the impugned order that the Hon'ble Supreme Court made observations, but, somehow, did not refer to the decision either mentioning the names of the parties or the citation thereof. Hence, it is a fit case to remit to the Tribunal to decide the following issue:

"Whether the communication of cancellation of insurance policy has reached the insured, owner of the bus bearing No.TN-45-D-1679, prior to the accident itself?"

21. It is also open to the Tribunal to afford an opportunity to both sides to lead oral and documentary evidence, in case, the parties choose, and to tender a

finding thereon to decide the controversy in the claim petition.

22. Accordingly, the Civil Miscellaneous Appeal is allowed and the matter is remitted to the Tribunal for disposal, as indicated above, setting aside the order under challenge. The Tribunal is directed to dispose of the matter within a period of six (6) months from the date of receipt of a copy of the order as it is an old matter relating to the year 1999. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 29, 2016.

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