

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.Nos.276 OF 2009 AND 762 OF 2016

COMMON JUDGMENT:

Both these appeals are preferred by the New India Assurance Company Limited, respondent No.2 in M.V.O.P.No.25 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal, Warangal, and O.P.No.404 of 2005 on the file of Chairman, Motor Accidents Claims Tribunal – cum – II Additional District Judge, Nalgonda at Suryapet, aggrieved by the orders and decrees, dated 20.02.2008 and 10.12.2008, passed in the said O.Ps., respectively, on the ground that the cheque issued by the owner of lorry that involved in the accident stood dishonoured and therefore, the policy/cover note, as the case may be, was not in existence on the date of accident and hence, the Tribunal went wrong in fixing liability on it.

2. M.V.O.P.No.25 of 2006 was preferred by the wife, minor son, parents and younger brother of one Banoth Kishan, who died in a road accident, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), claiming compensation of Rs.6,00,000/- for the death of said Banoth Kishan, whereas O.P.No.404 of 2005 was filed by petitioner No.1 in M.V.O.P.No.25 of 2006, under Section 166 of the Act, for the death of her minor son, by name Bala Teja, aged four years, claiming compensation of Rs.2,50,000/-. Thus, petitioner No.1, who lost her husband and minor son, in both the claim petitions is one and the same.

3. The manner in which the accident did take place is not in dispute. Still, it would be appropriate to refer to the basic facts in the present context.

4. The appellants are the petitioners, whereas respondent Nos.1 and 2, who are the owner and insurer of the lorry that involved in the accident, respectively, are respondent Nos.1 and 2 in the O.Ps. before the Tribunals.

5. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.Ps. before the Tribunals.

6. The facts in brief are that on 04.11.2005, in the morning, the deceased boy Bala Teja was playing in front of his house, while the deceased Banoth Kishan along with his father was sitting on the pial in front of their house situated at Palgulagadda Thanda, Ramaram Village, Kodakandla Mandal, Warangal District. While so, at about 08:30 AM, since the driver of the lorry bearing registration No.AAK-5544 proceeding towards Hanmakonda from Hyderabad driven it in a rash and negligent manner, initially, dashed a Hero Honda Splendor Motor Cycle bearing registration No.AP-36-N-0911 from behind and then due to the impact of sudden brakes applied by the driver of the lorry, the wheels of the lorry left skid marks up to a distance of 15 yards on black top road and since the driver of the lorry lost control over the lorry, it turned aside and proceeded towards right side of the

road, crossed the divider and proceeded further towards right side in the direction of the house of the deceased and dashed to a cycle and also the deceased and then hit the compound wall and stopped. In the said process, the boy, Bala Teja, went underneath the bi-cycle and the front wheel of the lorry, and died instantaneously and his father, Kishan, also died in the same accident. The Police, Khajipet, registered a case in Crime No.253/T-479/2005 against the driver of the lorry under Sections 304-A and 337 I.P.C. Thus, the claimants sought the amounts mentioned in the above.

7. Respondent Nos.1 and 2 opposed the claim petitions by filing separate counters.

8. Respondent No.1 stated that the lorry was insured with respondent No.2 and hence, he was not liable to pay compensation and sought to dismiss the claim petitions against him.

9. Respondent No.2 - insurer raised various pleas opposing the claims. It appears that no specific plea was taken in O.P.No.404 of 2005 with regard to dishonour of cheque and communicating the same to the owner of the lorry.

10. Based on the said pleadings, in the direction of accounting for responsibility about the accident and to determine compensation, the Tribunal framed the following three issues in each of the cases:

M.V.O.P.No.25 of 2006:

“1. Whether the accident that occurred on 04.11.2005 was due to rash and negligent driving of the Lorry bearing No.AAK 5544 resulting in death of the deceased Kishan?

2. Whether the petitioners are entitled to compensation as claimed? If so, to what amount and from whom?

3. To what relief?”

O.P.No.404 of 2005:

“1. Whether the deceased Banoth Teja died in motor vehicle accident, if so, whether the accident occurred due to the rash and negligent driving by the driver of lorry bearing No.AAK 5544?

2. Whether the petitioner is entitled for compensation, if so, to what amount and by whom it should be paid?

3. To that relief?”

11. In M.V.O.P.No.25 of 2006, on behalf of the petitioners, PWs.1 to 3 were examined and Exs.A1 to A6 were marked. On behalf of respondent No.2, RW.1 was examined and Exs.B1 to B7 were marked.

12. In O.P.No.404 of 2005, petitioner herself was examined as PW.1 and Exs.A1 to A9 were marked. On behalf of respondent No.2, its Legal Assistant and Administrative Officer were examined as RWs.1 and 2, respectively, and Exs.B1 to B5 were marked.

13. The Tribunals, having considered the evidence on record, held issue Nos.1 and 2 in favour of the petitioners in both the claim petitions and while rejecting the stand of the insurer that the memo of cancellation of policy was communicated to the owner of the lorry and the Road Transport Authority, awarded a sum of Rs.3,95,000/- in M.V.O.P.No.25 of 2006 and Rs.1,02,000/- in O.P.No.404 of 2005 as compensation.

14. The aforesaid orders are under challenge in the instant appeals mainly on the ground that, though, the policy was not in force as on the date of accident, the Tribunal has fastened liability on the insurer.

15. Heard Sri Kota Subba Rao and Sri T. Ramulu, learned counsel for the appellants in both the appeals, and Sri A. Ragu Ram, learned counsel for respondent Nos.1 to 5 and Sri C.A.R. Seshagiri Rao, learned counsel for respondent No.6, in M.A.CMA.No.276 of 2009.

16. So far as the stand taken by the insurer, the appellant herein, that the policy is not in force as on the date of accident, is concerned, the Tribunal, in paragraph No.17 of its order in M.V.O.P.No.25 of 2006, observed that the insurer, in fact, brought into existence Exs.B3, B4, B5 and B7 with anti date mentioning the date as '18.04.2005', only to prove that the cancellation took place and the same was communicated to the owner of the lorry and the Road Transport

Authority prior to the date of accident, but it failed in that endeavour, for the reason that the date of dispatch found by the Tribunal was '21.03.2006', which was about 4 ½ months after the accident. That has been the principal reason, the Tribunal did not accede to the stand taken by the insurer. The Tribunal, placed reliance on **New India Assurance Company v. Rula**¹ rendered by the Honourable Apex Court, wherein it was held that whether the premium was paid or not, is not the concern of the third party, and that the Insurance Company is liable in a case where the cheque issued towards premium was bounced so long as the policy is subsisting on the basis of the cheque issued initially and when the policy is cancelled by the Insurance Company, it is *sine qua non* that the notice of cancellation shall reach the owner of the vehicle and, of course, the Road Transport Authority.

17. The question involved in these two appeals is whether the appellant did satisfy that the communication of cancellation of the policy did reach the owner of the lorry and the Road Transport Authority prior to the date of accident.

18. When examined the original notices sent to the owner of the lorry and the Road Transport Authority, what has been observed by the Tribunal that the notices were sent on 21.03.2006 as per the seal of the postal authorities is absolutely correct. There could not be any other go, except to believe the same, which, certainly, gives a definite

¹ 2000 (2) ALD 75 (SC)

indication that the concerned officials of the Insurance Company dispatched them on 21.03.2006 to the owner of the lorry and the Road Transport Authority. Therefore, the finding recorded by the Tribunal in discarding Exs.B2 to B7, cannot be upset as the same is based on appreciation of evidence on record and in accordance with the evidentiary rule. Hence, there is no merit in these appeals.

19. Accordingly, both the appeals are dismissed confirming the orders and decrees passed by the Tribunals in the claim petitions. Miscellaneous Petitions, if any, pending in these appeals, shall stand closed. There shall be no order as to costs.

September 26, 2016.
MD

A. SHANKAR NARAYANA, J

