

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1082 OF 2008

Dated 11-7-2016.

Between:

United India Insurance Company Limited,
represented by its Divisional Manager, Divisional Office,
Railway Station Road, Kurnool.

..Appellant.

And:

Sri Gatanna and
others.

..Respondents.

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JUDGMENT:

This appeal is against order dated 12-6-2007 in W.C.No.3 of 2003 on the file of Commissioner for Workmens' Compensation and Assistant Commissioner of Labour, Mahabubnagar.

Respondents 1 and 2 herein submitted application to the Commissioner for Workmen's Compensation claiming compensation for the death of their son late Mahender.

They contended that deceased was a workman under third respondent herein and on 9-12-2001, the deceased and other Labourer went to bring load of mothuka leaves and while they were proceeding from Danthanoor to Atmakur village, driver of vehicle drove the vehicle with high speed in a negligent manner and lost control over the vehicle, as a result, vehicle slipped into tank from the road and the deceased sustained injuries and succumbed to them on the spot. They contended that deceased was getting Rs.3,000/- per month as wages and he was aged about 24 years and that they are

entitled for compensation of Rs.3,00,000/-.

Insurance Company filed counter disputing the relationship of employee and employer between the deceased and third respondent herein and further contended that the vehicle involved in the accident is not insured as the cheque issued by insured towards payment of premium was dishonoured and same was informed both to the insured and also to the transport authorities and therefore, there is no liability on Insurance Company.

On these contentions, lower authority conducted enquiry during which, one witness was examined and four documents are marked on behalf of claimants and similarly one witness was examined and six documents are marked on behalf of Insurance Company and on a consideration of oral and documentary evidence, lower authority granted compensation making both the insured and insurer jointly liable to pay compensation and granted a sum of Rs.2,02,304/- inclusive of stamp duty and advocate fee. Aggrieved by the order of the lower authority, Insurance company preferred the present appeal.

Heard arguments.

Advocate for Insurance Company submitted that lower authority erroneously fixed liability with Insurance company though there was no enforceable policy as on the date of incident. He submitted that evidence of R.W.1 is supported and corroborated with Exs.D.4, D.5 and D.6 which clinchingly show that there was no enforceable policy as the cheque issued towards payment of premium was dishonoured and the cancellation of policy was duly intimated both to the owner and transport authorities. He further submitted that the order of the lower authority is to be set aside to the extent of liability fixed on Insurance Company.

No arguments are advanced on behalf of claimants.

Now the point that would arise for my consideration in this appeal is whether the order of the Assistant Commissioner of Labour, is legal, correct and proper?

POINT:

There is no dispute as to the death of Mahender on 9-12-2001 in an accident. As already referred to above, claimants are parents of the deceased and they claimed a sum of Rs.3,00,000/- for the loss of their son contending that their son died during course of employment. Before the lower authority, Insurance company disputed the relationship of employee and employer but on a consideration of material evidence, that objection was negated and now that finding is not seriously disputed here. The only dispute is with regard to liability on the ground that there was no enforceable policy as on 9-12-2001.

As seen from the evidence, Branch Manager of Insurance company was examined as R.W.1 and he clearly deposed that the third respondent herein issued a cheque towards premium for Rs.6,400/- vide cheque No.319607 dated 4-10-2001 drawn on State Bank of India, Hyderabad Atmakur branch and that they issued a policy bearing No.051104/31/01/31.09.2004 for the period from 4-10-2001 to 3-10-2002. He deposed that cheque was sent for collection but it was returned with endorsement 'insufficient funds' and the cheque was dishonoured. He deposed Insurance company addressed a registered letter to owner on 29-10-2001 informing the owner that the policy stands cancelled since inception, and requested the owner to make fresh payment. He deposed that owner did not pay any amount to issue fresh policy. He further deposed that they also addressed a letter to R.T.A. Mahabubnagar on 29-10-2001 informing cancellation of Insurance policy. Copies of these letters are marked through him as Exs.D.4 and d.6. During cross-examination, it was

suggested to R.W.1 that 3rd respondent did not receive any letter of cancellation but Insurance company got marked postal receipt as Ex.D.5 through R.W.1. Lower authority disbelieved the contention of Insurance Company mainly on the ground that there is no material to show that original of Ex.D.4 was served on the owner i.e., 3rd respondent herein. But the lower authority lost sight of legal presumption under General Clauses Act with regard to a notice sent through registered post. Once it is shown that letter was sent to third respondent through registered post, it is for him to show that it was not received but there is absolutely no evidence on behalf of third respondent to rebut the statement of R.W.1.

In *NATIONAL INSURANCE COMPANY LTD., Vs. SEEMA MALHOTRA AND OTHERS* (^[1]) Honourable Supreme Court held as follows:

“The essence of the insurance business is the coverage of the risk by undertaking to indemnify the insured against loss or damage. They agree to pay the damages arising out of any accident by taking a chance that no accident might happen. Motivation of the insurance business is that the premium would turn to be the profit of the business in case no damage occurs. Such business of the insurance company can be carried on only with the premium paid by the insured persons on the insurance policy. The only profit, if at all the insurance company makes, of the insurance business is the premium paid when no accident or damage occurs. But to ask the insurance company to bear the entire loss or damages of somebody else without the company receiving a pie towards premium is contrary to the principles of equity, though the insurance companies are made liable to third parties on account of statutory compulsions due to the initial agreement, entered between the insured and the company concerned.

In a contract of insurance when an insured gives a cheque towards payment of premium or part of the premium, such a contract consists of a reciprocal promise. The drawer of the cheque promises the insurer that the cheque, on presentation, would yield the amount in cash. It cannot be forgotten that a

cheque is a bill of exchange drawn on a specified banker. A bill of exchange is an instrument in writing containing an unconditional order directing a certain person to pay a certain sum of money to a certain person. It involves a promise that such money would be paid.

Thus, when the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation."

From the above decision, it is clear that appellant Insurance company cannot be made liable in view of the fact that no premium was paid covering risk. Further, when the policy was cancelled long prior to the accident, making the Insurance Company also liable is incorrect and order of the lower authority to that extent is to be treated as illegal.

Considering the above referred Supreme Court decision and applying the same to the facts of the case, it is held that the Insurance company is not liable and the order of the lower authority to the extent of fixing liability on the Insurance company is liable to be set aside.

Accordingly, appeal is allowed and the direction of the lower authority to pay the compensation jointly and severally by the owner and Insurance Company is set aside and that the compensation is liable to be paid by owner alone and the Insurance Company is absorbed of its liability. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE

S.RAVI KUMAR

Dated 11-7-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs

[\[1\]](#) (2001) 3 SCC 151.