HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1684 of 2009

JUDGMENT:

Aggrieved by the Award dt.01.09.2006 in MVOP No.1198 of 2001 passed by the Chairman, M.A.C.T-cum-III Additional District Judge (FTC-II), Khammam (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 14.01.2001 at about 9 PM, when he along with his family members was waiting for auto to go to second show cinema on Mission Hospital road, Khammam, one jeep bearing No.AP 20 T 4060 being driven by its driver in a rash and negligent manner and at high speed dashed against the claimant. Thereby, he sustained injuries to his left knee and left foot. Immediately he was admitted in a private hospital at Khammam and thereafter shifted to Government Headquarters Hospital, Khammam where operation was done to his left knee and steel rod was inserted. It is averred that the accident was occurred due to the fault of driver of the jeep. On these pleas, the claimant filed M.V.O.P.No.1198 of 2001 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V.Act") and claimed Rs.1,00,000/- as compensation against respondents 1 to 3 who are the driver, owner and insurer of the offending jeep.

a) Respondents 1 and 2 remained *exparte*.

b) Respondent No.3/Insurance Company filed counter denying all the material averments and urged to put the claimant in strict proof of the same. It contended that policy was not in force as on the date of accident. It further contended that the jeep driver was not at fault in the resultant accident and claimant himself was negligent as such it was not liable to pay compensation and prayed for dismissal of the O.P.

c) During trial, PW1 was examined and Exs.A1 to A42 were marked on behalf of claimant. RW1 was examined and Ex.B1—policy copy was marked on behalf of respondents.

d) The Tribunal on appreciation of both oral and documentary evidence awarded compensation of Rs.39,825/- with proportionate costs and interest at 7.5% p.a. under different following heads against respondents 1 and 2 while exonerating R3/Insurance Company on the observation that Ex.B1—policy covers the period from 15.01.2001 to 14.01.2002 and hence the crime vehicle was not covered with policy on the date of accident.

Pain and suffering for grievous injuries	Rs.	25,000-00
Medical Expenses	Rs.	6,825-00
Loss of earnings for 4 months @ Rs.2,000/- pm	Rs.	8,000-00
Total:	Rs.	39,825-00

Hence, the appeal by the claimant.

3) The parties in the appeal are referred as they are arrayed

before the lower Tribunal.

4) Heard arguments of Sri R.Srinivasa Rao, learned counsel for appellant/claimant and Sri P. Bhanu Prakash, learned counsel for respondent No.3/Insurance Company. R1/driver not served. Though Notice sent to R.2/owner was served, there is no representation on his behalf.

5) Imputing the award, learned counsel for appellant/claimant argued that the lower Tribunal grossly erred in exonerating the Insurance Company on misappreciation of Ex.B1—policy holding that the policy period covered from 15.01.2001 to 14.01.2002 whereas the accident was occurred on the night of 14.01.2001 and hence the policy was not in force on the date of accident. He would submit that it is true that the accident was occurred on the night of 14.01.2001 at about 9 PM. It is also a fact that in Ex.B1—policy copy the Insurance Company mentioned the coverage of policy period from 15.01.2001 to 14.01.2002. However, the fact remains that the second respondent/owner paid the premium of Rs.2,161/- to the Insurance Company way back on 13.01.2001 itself which is evident from Ex.B1—policy and therefore, legally the policy shall be deemed to have come into force with effect from 13.01.2001 or at best on the intervening midnight of 13/14.01.2001 in which case, the policy was very much in force by the date of accident. He relied upon the judgment of the Madras High Court in ***Oriental Insurance Company Limited vs. Venkataraman***[1] on the proposition that the coverage of

insurance policy would start from the time of payment of insurance premium irrespective of the time mentioned in the policy. He thus prayed to fasten liability on the Insurance Company jointly and severally along with other respondents. He further argued that compensation awarded by the Tribunal was low and the same needs enhancement.

6) Per contra, learned counsel for 3rd respondent/Insurance Company while supporting the award argued that Ex.B1—policy was issued covering from 15.01.2001 to 14.01.2002 and therefore a binding contract was found to that effect which cannot be agitated by the claimant.

7) In the light of above rival arguments, the point for determination is:

"Whether the lower Tribunal was right in exonerating the Insurance Company and whether the compensation awarded is just and reasonable?

8) **POINT**: Accident, involvement of jeep bearing No. No.AP 20 T 4060 and the claimant sustaining injuries etc. facts are not in dispute.

a) Admittedly, the accident was occurred on the night of 14.01.2001 at about 9 PM at Khammam. The lower Tribunal exonerated the Insurance Company mainly on the observation that Ex.B1—policy covered the period from 15.01.2001 to 14.01.2002. In this context, a perusal of copy of Ex.B1—policy shows that no doubt the Insurance Company mentioned the coverage period from 15.01.2001 to 14.01.2002 and as already stated supra, the accident was occurred on the night of 14.01.2001 and hence in the normal circumstances, it can be stated that policy was not in force by the date of accident. However, the further facts mentioned in the policy copy would not allow me to come to such hasty conclusion. On the top of the policy copy it was mentioned that the insured paid premium of Rs.2,161/- on 13.01.2001. Further, at the bottom of the policy it was mentioned that the date of issuance of policy was on 13.01.2001 at 6 PM. Of course, it is mentioned in column 3 in Ex.B1 that the effective date of commencement of insurance is from 15.01.2001 to midnight of 14.01.2002. Now the point is having received the premium amount on 13.01.2001 at about 6 PM itself, whether the Insurance Company can relegate the operation of the policy to 15.01.2001. Section 64VB of Insurance Act, 1938 speaks about the time of assumption of risk by the insurer. It reads thus:

> "Section 64VB — ***No risk to be assumed unless premium is received in advance***—
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> *(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.*
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> *(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.*
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> *Explanation—Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.*

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.

(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer."

So, a perusal of Section 64VB would show that the Insurance Company shall not assume any risk unless premium is received by it. Conversely, it would mean as soon as the insurance amount is received, the insurance policy shall be deemed to commence. This aspect has been emphasized in ***Venkataraman***'s case (1 supra). In the instant case, the premium was paid by the insured on 13.01.2001 and policy was issued on that day at about 6 PM. But for the reasons best known to the Insurance Company, it has mentioned the operative period of the insurance policy from 15.01.2001 to mid night of 14.01.2002. There is no legal basis for the Insurance Company to relegate the date of operation of the policy. Since Section 146 of MV Act mandates that no person shall use a motor vehicle in a public place without insurance policy, the owner of the motor vehicle pays the premium for his vehicle with the fond hope that concerned Insurance Company will extend policy to his vehicle with immediate effect so as to indemnify his liability in respect of third party claim. Such being the law, there can be no valid reason for the Insurance Company to postpone the effective operation of insurance policy to a far off future date, as in the instant case, without any valid reason. Therefore, having regard to the facts and law involved in the instant case, it is held that policy shall be deemed to be in force with effect from 13.01.2001 to the mid night of 12.01.2002. Since the accident was occurred on the night of 14.01.2001, the Insurance Company is liable for the claim of claimant.

b) Sofaras quantum of compensation is concerned, I see no reason to interfere with the same.

9) In the result, this MACMA filed by the claimant is partly allowed with costs and ordered as follows:

a) While confirming the compensation awarded by the lower Tribunal it is ordered that respondents 1 to 3 in the OP are jointly and severally liable to pay compensation.

b) Respondents are directed to deposit compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 05.08.2016
Murthy

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[1] 2013 ACJ 2493 (Mad)