HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.1184 OF 2005

JUDGMENT:

The 2nd respondent-Insurer among the two respondents including the owner of the lorry bearing No.MWN 231, in O.P.No.1706 of 2001, filed u/s.166 of the Motor Vehicle Act,1988 *(for short, 'the Act')*, on the file of the learned Chairman, Motor Accidents Claims Tribunal–cum-IV Addl. District Judge, Nizamabad(*for short, 'Tribunal')*, by the claimant for compensation of Rs.3,00,000/- (Rupees three lakhs only) for the injuries sustained in the motor accident on 28.09.2001 since the tribunal awarded Rs.45000/- with interest at 9%p.a. out of total compensation of Rs.60,000/- showing the claimant is entitled to only 75% but for contribution of him remaining of 25% shown, by its award dated 08.02.2005, impugning the same preferred the present appeal with the contentions in the grounds of appeal as well as during the course of arguments that the tribunal ought not to have awarded compensation mulking the Insurer with the liability since the policy no way subsisting by the time of accident much less to indemnify as the cheque was returned long before the date of accident and the same was informed to the insured through Registered Post with Acknowledgment due to the address available on record.

2.Whereas, it is the contention of the respondents-claimants that the award of the tribunal holds good and for this Court there is nothing to interfere with the finding of the tribunal, when there is no proof of service much less with acknowledgment of intimation of learned counsel about the policy, hence to dismiss the appeal.

3. Heard and perused the material on record.

4. The accident was dated 28.09.2001. Ex.A.1 policy was in force from 29.09.2000 to midnight of 28.09.2001. However, the fact remains that the policy issued on 28.09.2000 is covered by a cheque for the amount and the cheque when presented on 01.10.2000 through Central Bank for encashment, same was returned dishonored and the Insurer vide notice dated 20.10.2000 addressed the insured from the dishonor of the cheque cancelling the policy forthwith and Insurer cannot be made liable for the policy to cover any risk and the same when sent by registered post to the same address of the insured mentioned in the policy, same was returned as unclaimed. Once the same is sufficient service which speaks the cancellation of policy long before the accident, the tribunal properly appreciated the evidence in fastening the liability with the Insurer-appellant herein instead of exoneration.

5. In UIIC Limited Vs. Laxmamma[1], the Apex Court held that where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.

6. However, the fact remains that this Court while admitting the appeal of the Insurer directed to deposit half of the amount from the compensation by permitting the claimant to withdraw without furnishing security together with interest and costs. Thus, as laid down in Laxmamma supra so far as the amount permitted and withdrawn if any

[1] 2012(5) SCC 234

by the claimants pursuant to the order of the Court, the Insurer is entitled to recover the same only from the owner of the vehicle and not from the claimant and any amount not withdrawn and lying in deposit before the Court, the insurer is entitled to for the amount by filing cheque petition or by filing execution petitions like in pay and recovery directions.

7. In the result, the appeal is allowed in part with the above directions. No costs. Consequently, pending miscellaneous petitions, if any, in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 01.09.2016
Vvr