HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2289 OF 2005

JUDGMENT:

The United India Insurance Company Limited, which is respondent No.2 in O.P. No.765 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nellore (for short, 'the Tribunal'), feeling aggrieved of the order dated 16.05.2005, granting a sum of Rs.67,165/- with interest at 9% per annum, as against the claim of Rs.1,09,868/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the damages caused to the bus bearing registration No.AP 10Z 9025, belonging to the Andhra Pradesh State Road Transport Corporation (respondent No.1-petitioner), in a road accident, which took place on 10.12.2002 at 6-10 p.m., near Rudrakota on G.N.T. Road, Nellore District, the instant appeal is preferred under Section 173 of the Act seeking to set aside the liability on the ground that the cheque issued by respondent No.2 herein (owner of the lorry) was bounced and, thus, dishonored and, therefore, it cannot be construed as valid and effective insurance policy being in substance on the date of accident.

2. The appellant herein is respondent No.2, who is insurer of the accident vehicle, while respondent Nos.1 and 2 herein, who are the Andhra Pradesh State Road Transport Corporation (for short, 'petitioner-Corporation')

and owner of the accident vehicle, respectively, are the petitioner and respondent No.1, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The Tribunal having narrated the pleadings, framed three issues about the responsibility for the accident and appreciated the evidence of P.Ws.1 to 3 and Exs.A.1 to A.5 on behalf of the petitioner and the evidence of R.W.1 and Exs.B.1 to B.4 on behalf of respondent No.2-Insurance Company, but however, observed that in the cross-examination of R.W.1-official from the local branch of respondent No.2-Insurance Company, has admitted that on the date of accident, i.e., on 10.12.2002, as per the policy, there was no insurance coverage and the validity commences from 26.02.2002 to 25.02.2003 and, therefore, Ex.B.1 had valid insurance coverage against the accident vehicle on the date of accident. The Tribunal further observed that in the cross-examination, the very same witness has admitted that he did not file any documentary evidence to show that the cheque was bounced and respondent No.2-Insurance Company has taken any action on the owner of the vehicle and as per the insurance policy, there was insurance coverage. Basing on the said admissions, the Tribunal, while holding

that respondent No.2-Insurance Company failed to substantiate the stand taken by it, directed respondent No.2 to pay a sum of Rs.67,165/- towards damages with interest at 9% per annum to the petitioner-Corporation.

5. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that there was no premium paid by the insured as on the date of accident and the cheque issued in respect of the premium was dishonored and the insured and the R.T.A. Officials were intimated the same prior to the date of accident and the Tribunal has not appreciated Exs.B.1 to B.4 and, therefore, sought to set aside the order and decree under challenge herein.

6. Heard Sri Naresh Byrapaneni, learned Standing Counsel for the appellant-Insurance Company. No representation for respondent No.1 herein. Appeal was dismissed for default against respondent No.2 herein by the order dated 05.01.2012.

7. Learned Standing Counsel for the appellant-Insurance Company would fairly submit that the Insurance Company has not filed the returned cheque along with the memo issued by the bank showing the reason for dishonoring the cheque and, therefore, the Tribunal granted the amount fixing liability on the Insurance Company.

8. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the parties. Documents filed by respondent No.2-Insurance Company before the Tribunal were letter dated 12.12.2003 addressed by respondent No.2-Insurance Company cancelling the insurance policy from inception relating to the offending lorry bearing registration No.AP 31U 2054, photostat copy of the insurance policy relating to the offending vehicle, photostat copy of the letter addressed to respondent No.1 and the Regional Transport Officer, Visakhapatnam intimating cancellation of the insurance policy relating to the offending vehicle and the photostat copy of the letter dated 17.03.2003 addressed to the petitioner by respondent No.2-Insurance Company. Thus, it is clear that respondent No.2-Insurance Company, though, examined one of its official from the local branch and marked Exs.B.1 to B.4, has failed to file dishonored cheque along with memo issued by the concerned bank and, therefore, the Tribunal rightly declined to accept the stand of respondent No.2-Insurance Company basing on the admissions made by R.W.1 and there is, absolutely, no merit in the instant appeal.

9. Therefore, the instant appeal is dismissed confirming the order under challenge. There shall be no order as to costs.

10. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

3rd February, 2016

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