HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.M.A.Nos.2376 & 3526 of 2004

COMMON JUDGMENT:

The 3rd respondent-insurer among three respondents including driver and owner of Swaraj Mazda bearing AP-30-T-1809, aggrieved by the awards of the Tribunal with joint liability in both the claims vide judgments dated 02.12.2003 in O.P.No.480 of 2000 on the file of the Motor Accidents Claims Tribunal-cum-I Additional Sessions Judge at Rajahmundry, maintained by mother and sister of deceased G. Kanaka Raju @ Raju, under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') for Rs.2,00,000/- since awarded Rs.1,72,000/- with interest @ 9% per annum and vide award dated 04.06.2004 in O.P.No.894 of 1999 maintained by wife and minor child of the deceased NCV Raghavulu, under Section 166 of the Act for Rs.1,50,000/- since awarded Rs.1,12,000/- with interest @ 9% per annum.

2. The common contentions in the grounds of both the appeals mostly are that the Tribunal gravely erred in fastening liability on the insurer instead of exonerating apart from compensation awarded is excessive so also rate of interest, despite there is no policy in subsistence for the dishonour of cheque on which the policy issued, after intimation to the insured, the same was cancelled and once same is the position, the Tribunal should have seen that for no policy subsists as cancelled with intimation, the insurer cannot be made liable and thereby sought for allowing both the appeals by exonerating the liability of the insurer.

3. Whereas it is the contention of the learned counsel for the claimants, who are respondent Nos.1 & 2 in both the appeals, for the respondent No.3/driver to the appeals was endorsed as not necessary party and respondent No.4-owner of the vehicle failed to attend in one

of the matters, but for contesting in the other by supporting the contentions of the claimants and the awards of the Tribunal, that the award of the Tribunal holds good and the insurer cannot be made liable to exonerate for there is admittedly no intimation of cancellation of policy to the RTA concerned to enter in the records and but for to pay and recover at best, the insurer cannot be exonerated in toto and thereby sought for dismissal of the appeals.

4. Heard both sides and perused the material on record.

5. The factual matrix relevant for the disposal of both the appeals in nutshell are that the accident was taken place on 02.02.1999 near Ambajipeta, East Godavari District. The deceased in O.P.No.480 of 2000 was claimed working as cleaner in Swaraj Mazda with a salary of Rs.3,000/- per month and unmarried. It was alleged due to the rash and negligent driving of the 1st respondent of the said vehicle of 2nd respondent, the vehicle dashed a road side coconut tree and he sustained injuries and died in the way before admitting in the hospital vide crime No.11 of 1999 against the 1st respondent for death of the deceased herein. In O.P.No.894 of 1999, the deceased NCV Raghavulu was travelling by engaging the same vehicle on hire with load of prawn seed from Vizag. The Tribunal held from the evidence on record particularly of Exs.A.1-FIR, A.2-PM report and A.3-inquest report respectively with evidence of one of the claimants and eye witness of the accident was the result of rash and negligent driving of the driver-respondent No.1, vehicle of respondent No.2 and insured with respondent No.3.

6. Now coming to the liability of respondent No.3, which is the subject matter of the appeals. The insurer filed counter in the claim petitions opposing the claim stated that there is no policy in force as per the dishonour of the cheque and after intimation of non-payment the policy was cancelled, examined RWs.1 & 2 and placed reliance on

Exs.B.1 to B.9 and Ex.X1. The cheque issued for the premium of policy of Rs.6,743/-, which is covered by Ex.B2 in O.P.No.894 of 1999 when presented was dishonoured covered by Ex.B3 endorsement in that OP which is equal to Ex.B1 endorsement in O.P.No.480 of 2000 and immediately the bank addressed Ex.B1 letter dated 26.07.1998 to the insured intimating dishonour and same is covered by Ex.B4-postal receipts of OP.No.894 of 1999 equal to Ex.B2-postal receipts in O.P.No.480 of 2000 and there is also endorsement of policy has cancelled, which is Ex.B4 in O.P.No.480 of 2000 equal to Ex.B5 in O.P.No.894 of 1999. The very counter of the 3rd respondent-insurer in both the claim petitions categorically stating these facts covered by evidence of RWs.1 & 2 with reference to documents supra saying the cheque received for the policy issued subject to clearance when presented dishonoured and the policy was cancelled and intimated to the insured in July 1998 covered by postal receipts referred supra of sending by post the factum of cancellation of policy. It is therefrom, the contention of the insurer no liability thereafter under the policies since cancelled for the cheque dishonoured and even on intimation failed to pay. The contention of the insurer mainly relying upon the expression of the Apex Court in **United India Insurance Company Limited Vs. Laxmamma & Others**[1], which scanned the entire case law including the earlier expression of Apex Court held at Para 26 that where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such a cheque is returned dishonoured, the liability of the authorized insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of Sections 147(5) and 149(1) of the Act unless the policy is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. Where the policy issued to cover a vehicle on receipt of cheque paid towards premium and cheque gets dishonoured and the insurer cancels the policy before accident occurs, by sending intimation thereof to the insured, the companies liability to indemnify the third parties covered by the policy ceases and the insurance company is not liable to satisfy the awards in respect thereof.

7. The learned counsel for the respondents supra in both the appeals however placed reliance on the following decision in **Oriental Insurance Company Limited Vs. Inderjit Kaur**[2] where the Apex Court three Judge Bench held that when policy issued on receipt of cheque towards premium in contravention with the provision of Section 64-VB of the Insurance Act the public interest that a policy of insurance must clearly prevail over interest of the appellant insurer to compensate the third parties unless the policy is cancelled or rescinded by the insurer by adopting the procedure prescribed by law, by referring to the expression of the Orissa High Court in **United India Insurance Company Limited Vs. Ayeb Mohammed**[3]**,** the other decision placed reliance is of this Court in **Oriental Insurance Company Limited Vs. A. Balraj & Another**[4], where a single Judge of this Court by placing reliance on Inderjit Kaur (Supra). The expression of the Apex Court in **New India Assurance Company Limited Vs. Rula**[5] another expression of the Apex Court in **National Insurance Company Limited Vs. Seema Malhotra**[6] observed that when liability of insurance company commences from date of issuance of cover note after obtaining premium either in cash or by cheque and when it is the duty of the insurer to see that the person from whom the cheque is accepted has sufficient funds in his account. Subsequently, the insurer cannot deny the right to indemnify the third parties unless it is proved that the insurer duly cancelled the policy issued to the insured in accordance with law. The other expression placed reliance is of the Allahabad High Court in **Oriental Insurance Company**

Limited Vs. Upendra Babu Dubey and Others[7] referring to **Seema Malhotra, Rula, Inderjit Kaur** and **Ayeb Mohammed** Supra of the Apex Court. The other decision placed reliance is of the Apex Court in Deddappa Vs. Branch Manager, National Insurance Company Limited in Appeal No.5829 of 2007, where **Inderjit Kaur, Rula, Seema Malhotra** Supra of the Apex Court referred among other expressions including **Damadilal and Others Vs. Parashram and Others**[8], **Regional Director, Employees State Insurance Corporation, Trichur Vs. Ramanuja Match Industries**[9] and **New India Assurance Company Limited Vs. Harshadbhai Amrutbhai Modhiya and Another**[10], holding that the distinction between statutory liability of insurer vis-à-vis third party in the context of Sections 147 & 149 of the Act and its liabilities in other cases is not obvious, but some liabilities arise under contract of insurance would have to be made if the contract is valid. If the contract of insurance has been cancelled and all concerned have intimated there about, the insurance company would not be liable to satisfy the same. In **Rula's case** Supra it is observed that to make the insurer liable, it must be shown to indemnify the third party claim that by the date of accident the policy is in subsistence and not cancelled. In **Inderjit Kaur** Supra the policy was held cancelled and intimated to the insured and also intimated to the RTO concerned by the insured by left open the question of insurer is entitled to avoid or cancel the policy from the cheque has not been honoured, ordered the third party claim to satisfy. Whereas in **Laxmamma's** case Supra by following and explaining **Inderjit Kaur** and by explaining **Dedappa** supra and following **Rula** supra and referring to **Seema Malhotra**, it is categorically observed that once for the cheque dishonoured of the policy issued based on cheque by the insurer in favour of the insured of the vehicle and the policy cancelled by intimation from the dishonour of the cheque, the liability of the insurer including to the third party being absolved for no valid policy in subsistence from the intimation of cancellation to the insured, however held that so far as amount paid by the insurer and permitted by Court to withdraw by claimants, the insurer is entitled to recover from the owner and not from the claimants.

8. From the above, the law is very clear that the insurer is entitled to cancel the policy, however, the cancellation of the policy from dishonour of cheque came into effect from the intimation to the insured of such cancellation and from that moment, there is no liability of the insurer even to a third party claim. There is nothing from any of the expressions of mandatory to intimate the RTA concerned as it is a contract between the insurer and insured and once the policy was cancelled and intimated by the insurer, the insured cannot ply the vehicle without obtaining fresh policy from any other company by any other means and in such case of violation, not only liable for penal consequence for plying without policy statutorily required, but also personally liable for claimants. As such, here there is a proof about cancellation of policy by intimation by registered post and the receipts are also filed which were long prior to accident for the policy no way subsists as on the date of accident, fixing the liability on the insurer jointly along with driver and owner by the Tribunal is unsustainable and is liable to be set aside.

9. Accordingly and in the result, both the appeals are allowed in part by setting aside the orders of the Tribunal, however as laid down in **Laxmamma's** case (Supra 1) whatever the amount deposited by the insurer after award of the Tribunal and anything permitted by the Court to withdraw by the claimants, the insurer is not entitled to claim from the claimants, but for to recover from the owner of the vehicle and for rest of any amount deposited and not permitted, the insurer shall withdraw by filing petition.

Consequently, miscellaneous petitions, if any, shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 04.08.2016
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[1] 2012 (5) SCC 234

[2] (1998) 1 SCC 371

[3] 1991 (2) Acc CJ 650

[4] 2002 ACJ 1724

[5] 2000 (3) SCC 195

[6] 2001 (3) SCC 151

[7] 2002 ACJ 1842

[8] 1976 4 SCC 855

[9] AIR 1985 SC 278

[10] 2006 (5) SCC 192