HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.2522 OF 2005

JUDGMENT:

The 2nd respondent—insurer among two respondents including the owner of the bus bearing No.AP A 9153, preferred this appeal impugning the award dated 24.03.2005 in O.P. No.270 of 1999 on the file of Motor Accidents Claims Tribunal –cum- V Additional District Judge (FTC), Anantapur (for short the 'Tribunal') under Section 166 of M.V Act (for short 'the Act') against claimants 1 to 5, who filed claim petition for compensation of Rs.1,70,000/- for the death of deceased K.G.Parvathaiah in the bus accident dated 18.10.1997, from contest, since the Tribunal awarded joint liability against respondents 1 and 2 by awarding compensation of Rs.1,16,628/- with interest at 9% per annum, with the contentions in the grounds of appeal
vis-à-vis oral submissions of learned counsel for appellant—insurer that the Tribunal gravely erred even though insurer proved that the policy issued is based on a cheque originally under cover note and cheque was dishonoured and even intimated about the dishonour by canceling apart from acknowledged by owner—1st respondent (insured) that absolves the liability of insurer under the policy and thereby for the accident subsequently occurred, There is no policy in subsistence much less to make the insurer liable and that was not properly appreciated by the Tribunal in fixing liability, hence to set-aside the award and exonerate the insurer.

2) Whereas it is the contention of learned counsel for claimants that the 1st respondent did not choose to appear in the appeal though filed counter before the Tribunal and did not come to witness box; that the award of the Tribunal holds good in fixing joint liability but for no cross objections, the compensation awarded is utterly low, to enhance and hence to dismiss the appeal.

3) Heard and perused the material on record.

4) RW.1 is employee of the insurer. In his evidence, he exhibited Exs.B1 to B5. The cover note issued was dated 13.04.1997. The policy issued pursuant thereto was dated 16.04.1997 and valid upto 12.04.1998 midnight. The policy is covered by cheque as per the evidence of RW.1 and also from the contest of the counsel for respondent No.2—insurer vide cheque dated 22.04.1997 for Rs.11,414/-. No doubt, Ex.B1—policy shows the policy amount total was Rs.5,811/-. When the cheque presented by the bank through SBI Uravakonda was returned dishonoured and the same was intimated by bank vide intimation dated 24.04.1997 with no lapse of time. Intimating about the dishonour and cancellation of policy, the bank addressed a letter to the 1st respondent—insured and 1st respondent acknowledged the same vide Ex.A5 acknowledgement dated 15.05.1997.

5) Undisputedly, the address of the 1st respondent in the claim petition, in the notice of intimation and also in the

acknowledgment is one and the same. However there is signature of one K.Viswanath and the name of the 1st respondent is K.Pamanna. Merely because somebody signed the acknowledgment, much less to say there is no service of the intimation of the dishonour of the cheque and cancellation of the policy. Once that is the case and cheque was dishonoured and after dishonour intimated to make payment, else canceling the policy that is sent by Registered Post to the address of 1st respondent and there is acknowledgment duly signed and there is a presumption knowingly under Section 114 of Evidence Act but also under Section 27 of General Clauses Act in favour of deemed service and 1st respondent counsel did not deny much less to come to witness box to rebut the presumption. There is nothing more to say the policy is cancelled for dishonour of the cheque and policy is not in subsistence after May, 1997 and as on the date of accident dated 18.10.1997, the insurer not liable as per the expression of the Apex Court in **United India Insurance Company Limited vs Laxmamma & others**[1]. The Tribunal not appreciated these material facts while fastening the joint liability against the insured—respondent No.1 and the insurer —respondent No.2, though there is no policy in existence. However, the fact remains that from the joint liability fixed by the Tribunal, the insurer, while filing the appeal, pursuant to the order of stay, deposited half of the amount and it appears the amount deposited was permitted to be withdrawn by the claimants without furnishing any security.

6) Having regard to the above, the award passed by the Tribunal is set aside holding that the insurer cannot be made liable. It is made clear that the insurer to recover the amount from the owner of the vehicle and not from the claimants.

7) Accordingly and in the result the appeal is allowed. No order as to costs.

8) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.08.07.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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M.A.C.M.A No.2522 OF 2005

Date:08.07.2016

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[1] 2012 (5) SCC 234