THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

M.A.C.M.A.No.565 of 2006

JUDGMENT:

The 3rd respondent-Insurance Company in O.P.No.970 of 2001 filed by the 1st respondent-claimant on the file of the Motor Accident Claims Tribunal-cum-II Additional District Judge (FTC-I), Khammam is the appellant in the present appeal, filed under Section 173 of the Motor Vehicles Act, 1988.

Heard learned counsel for the appellant-Insurance Company Sri K.Laxmi Prasad and perused the material available before the Court.

In an accident that took place on 12.02.2001, the claimant/1st respondent sustained injuries. The 1st respondent herein approached the Tribunal by filing M.A.T.O.P.No.970 of 2001 under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.2,20,000/- for the injuries sustained by him and for the death of the sheep in the accident. The driver of the vehicle remained ex parte and the respondents 2 and 3 in the O.P. filed counter and written statement respectively.

On the basis of the pleadings available, the Tribunal framed the following issues for trial:

1. Whether the accident took place due to rash and negligent driving of the driver of the lorry bearing No. AP 02T 6868/R-1?

2. Whether the petitioners are entitled to any compensation. If so, to what amount from which of the respondents?

3. To what relief?

During the course of trial, the claimant apart from examining himself as P.W.1 also examined one Dr.P.N.V.S.V.Prasad as P.W.2 and Exs.A1 to A7 were marked. On behalf of the insurance company, one Sri D.Veera Raju, Senior Assistant working in the appellant company was examined as R.W.1 and Exs.B1 to B.5 were marked.

On issue No.1, the Tribunal categorically found that the accident took place due to the rash and negligent driving of the offending vehicle, i.e., lorry bearing No.AP 02T 6868. While dealing with issue No.2, as regards the quantum of compensation, the Tribunal granted a sum of Rs.1,95,000/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of deposit making all the respondents jointly and severally liable. This appeal filed by the insurance company challenges the validity and legal sustainability of the said award passed by the Tribunal.

The contention of the learned counsel for the appellant-Insurance company in the present appeal is that since the subject policy was not in force as on the date of accident, the Tribunal grossly erred in fixing the liability on the insurance company. In elaboration, it is maintained by the learned counsel for the appellant-Insurance company that Ex.B1 cheque issued by the owner of the vehicle towards premium amount was presented in Canara Bank, Governerpet branch, Vijayawada and the said cheque was dishonoured by the said bank under Ex.B3 memo dated 08.12.2000 on the ground of insufficient funds. It is further submitted that thereafter by way of Ex.B4 endorsement dated 12.12.2000, the insurance company cancelled the subject policy and the same was intimated vide Ex.B5 letter dated 12.12.2000 to the owner of the vehicle. It is further submitted that since the accident took place on 12.02.2001 and as the policy has not in force on the said date and as the owner of the vehicle did not pay the premium thereafter also, the insurance company cannot be mulcted with the responsibility of paying the amount to the claimant. The Tribunal in fact dealt with this issue at paragraph 11 of the impugned award.

The evidence of R.W.1 who was examined on behalf of the appellant-Insurance company is available on record. During the course of cross-examination, R.W.1, in clear terms, deposed that the company has no postal receipt or the postal acknowledgement to show that Ex.B5 notice of cancellation of the policy was sent and served on 2nd respondent. It is also clear from the evidence of R.W.1 that the company does not have the undelivered cover of Ex.B5 also nor the appellant-insurance company filed any certificate from the postal department to demonstrate that Ex.B5 notice of cancellation of the policy was sent to the owner of the vehicle.

Learned counsel for the appellant-Insurance company made an effort to impress upon this Court by contending that in view of the suggestion during the cross-examination of R.W.1 on behalf of the claimant that despite the dishonour of the cheque, the insurance company would be liable, there cannot be any claim by the claimant from the insurance company. A perusal of the said part of cross-examination of R.W.1 on behalf of the claimant discloses that a question was obviously posed to R.W.1 as to the liability of the insurance company despite the dishonour of the cheque, but the same cannot be construed as the knowledge of the said dishonour. In fact the Tribunal by relying upon the judgment of the Hon'ble Apex Court in the case of ***Oriental Insurance***

Company v. Indrajith Kour and others[1] granted relief in favour of the claimant and against the insurance company. Therefore, having regard to the reasons assigned by the Tribunal in the impugned order for granting the compensation in favour of the 1st respondent-claimant, this Court is not inclined to meddle with the Award passed by the Tribunal.

Accordingly, the appeal is dismissed. No costs.

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

A.V. SESHA SAI, J

21st December, 2017.
ssp

[1] 1997(4) CCC 1999