

SMT JUSTICE T. RAJANI

MACMA.No.182 of 2008

JUDGMENT:

This appeal is preferred by the appellant-insurance company, who is the second respondent before the Court below, assailing the judgment of the IV Additional District Judge, Kurnool in OP.No.942 of 2004 dated 23.11.2006 on the grounds that the Court below grossly erred in disbelieving that the insurer has not given notice to the owner and RTA owing to the dishonour of premium cheque, where, in fact, the appellant has given notice as per rules and regulations; the Court below erred in disbelieving the evidence placed by the appellant with regard to proof of cancellation of the policy and intimation of the same to the owner of the vehicle.

2. Heard both the counsel.

3. The facts of the case, to the extent necessary, are that the first respondent in the Court below paid premium for the policy by way of cheque dated 17.09.2003 and later, when the appellant sent the cheque for collection, the same was dishonoured on ground of insufficient funds. As soon as the intimation was received from the concerned branch, a letter was addressed to the insured by the insurer about the bouncing of the cheque issued towards premium and cancellation of policy, since the cheque could not be honoured due to insufficient funds in his account.

4. The Court below at para 10 of its judgment took up the discussion on this aspect and recorded the contention of second

respondent that they are not liable to pay any compensation to the claimant as there was no valid and effective insurance coverage of the vehicle covering the date of accident. It also noted that the second respondent examined the Senior Assistant of his company and he spoke about the issuance of cheque by the insured towards premium and the same being dishonoured on the ground of insufficient funds and that he deposed that the policy automatically stood cancelled. Information given to the first respondent was also spoken to by him and the same was observed by the Court below. Ex.B5 is the original cheque issued by the insured; EX.B2 is the original cheque return memo; Ex.B3 is the letter addressed to the first respondent by the second respondent informing about the dishonour of the cheque and cancellation of the policy; Ex.B4 is the attested copy of letter addressed to RTA informing about the cancellation of policy. The above documents were all marked through the said witness. The Court below observed that the said witness, in his cross-examination stated that the policy will be in force till the payment of cash of premium or in case of payment by cheque, it will be in force till realization of cheque amount.

5. Having noted all the above facts, the Court below observed that there is no record to show that the second respondent informed about bouncing of the cheque to the owner of the vehicle and that there is no scrap of paper to show that the second respondent sent legal notice to the first respondent i.e. owner of the vehicle. The above observations are contrary to the observations made by the Court below in para 10 of the judgment. The Court below relied upon a decision of the

Supreme Court in *NATIONAL INSURANCE CO. LTD. v. S. MALHOTRA* (2001 (2) Law Summary 24) wherein the Supreme Court held that the insurer has no liability towards insured unless and until premium payable is received by the insurer and the insurance company is legally justified in cancelling the policy as no third party is involved. Having observed that the cheque issued by the insured towards first premium was dishonoured by the drawee-bank due to insufficiency of funds, strangely, the Court below concludes that having regard to the said decision and keeping in view the legal principles, the second respondent-insurance company cannot be exempted from payment of compensation. The said conclusion drawn by the Court below is completely inconsistent with the understanding that was drawn from the decision relied upon by the appellant herein. The facts of the case and the documents filed by the appellant would clearly show that the fact of dishonour of cheque and also cancellation of the policy was informed to the insured well before the date of accident, hence, it cannot be said that the appellant did not fulfil its obligation before claiming that it is not liable. Hence, in view of the above, the judgment of the Court below to the extent of making the appellant liable cannot be sustained.

6. The counsel for the appellant, however, submits that as per the direction of this Court, half of award amount was already deposited before the Court below. Hence, to the extent of the amount deposited before the Court below, the appellant is permitted to proceed against the insured without there being any separate suit.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

August 11, 2017

Note: LR copy to be marked
(B/o) DSK

