THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.209 of 2006

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) is filed by the appellants-the New India Assurance Company Limited, challenging the order, dated 30.09.2004, passed in O.P.No.331 of 1997, by the Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy ('the Tribunal', for brevity).

2. Heard the learned Standing Counsel for the appellants-Insurance Company and perused the record. Despite listing this matter under the caption "For Orders", the learned counsel for the 1st respondent-claimant is not ready. Notice on the 2nd respondent-owner of the offending vehicle was taken out through substituted service by way of publication in newspaper, and the paper publication, dated 12.07.2018, is filed. In spite of the same, the 2nd respondent did not choose to contest this appeal. This appeal is of the year 2006. Hence, this appeal can be disposed of on merits basing on the material available on record, without waiting for the learned counsel for the 1st respondent-claimant to advance arguments.

3. The learned Standing Counsel for the appellants-Insurance Company would contend that there was no policy of insurance in respect of the offending Tanker bearing registration No.MWU-3963 as on the date of accident. The offending tanker said to have caused the subject accident on 05.03.1995. Without there

being policy of insurance and oral evidence, the Tribunal, relying on Ex.A.6-Letter received by Regional Transport Officer, Bombay (East) giving particulars of the offending Tanker, tagged liability against the appellants-Insurance Company, which is erroneous and ultimately prayed to allow the appeal by setting aside the Order under challenge.

4. It is not in dispute that the 1st respondent-claimant suffered injuries in a motor accident occurred on 05.03.1995, due to rash and negligent driving of the driver of the Tanker bearing registration No.MWU-3963. The only dispute is whether the offending Tanker was validly insured with the appellants-Insurance Company, as on the date of subject accident.

5. There is evidence of R.W.1-P.Venu, an employee of the appellants-Insurance Company, who clearly and categorically stated that the Tanker bearing registration No.MWU-3963 was not insured with the appellants-Insurance Company. Ex.B.1 is the letter addressed by the appellants-Insurance Company to the 2nd respondent-owner of the offending Tanker, calling upon to furnish the insurance particulars of the offending Tanker. But the said letter was returned un-served, as per Ex.B.2. Ex.A.6 is the information sheet, dated 30.07.1997, furnished by the Regional Transport Officer, Bombay (East), which discloses that the 2nd respondent herein is the owner of the offending Tanker and the offending Tanker was insured with the appellants-Insurance Company and the insurance was valid with effect from 27.02.1995 to 26.02.1996. There was no basis for the Regional

Transport Officer, Bombay (East) to issue such a letter. He did not disclose any material to issue such a letter. Mere reliance on Ex.A.6 would not demonstrate that the offending tanker was validly insured with the appellants-Insurance Company as on the date of the subject accident. Nothing prevented the 1st respondent-owner of the offending Tanker from filing a copy of the Insurance Policy in the impugned O.P., when there is specific evidence of R.W.1 that there that the offending Tanker was not validly insured with the appellants-Insurance Company as on the date of accident. In the circumstances, the Tribunal ought not to have relied on Ex.A.6 and held that the offending Tanker was validly insured with the appellants-Insurance Company as on the date of the subject accident. Further, the Regional Transport Officer, Bombay (East) is not the officer concerned to maintain and certify the insurance particulars of the offending Tanker. Therefore, it can be held that the claimant and the owner of the offending Tanker failed to prove that the vehicle has a valid insurance policy as on the date of the subject accident. In view of the same, it is held that the Tribunal erroneously tagged the liability against the appellants-Insurance Company for payment of compensation. Accordingly, the impugned order passed by the Tribunal is liable to be set aside, insofar as appellants-Insurance Company is concerned.

6. In the result, the appeal is allowed by setting aside the order, dated 30.09.2004, passed in O.P.No.331 of 1997, by the Chairman, Motor Accident Claims Tribunal-cum-Principal District

Judge, Medak at Sangareddy, insofar as appellants-Insurance Company is concerned. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

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Dr. SHAMEEM AKTHER, J

06th August, 2018
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