THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.223 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/United India Insurance Company Limited, aggrieved by the grant of compensation of Rs.32,000/- with proportionate costs and interest at the rate of 9% per annum from the date of petition till the date of realisation to the 1st respondent/claimant, by the learned Chairman, Motor Accident Claims Tribunal – cum - I Additional District Judge at Nizamabad *vide* order, dated 20.08.2004, passed in O.P.No.941 of 1999.

2. Heard the submissions of the learned Standing Counsel appearing for the United India Insurance Company representing the appellant and the learned counsel for the 1st respondent/claimant, and perused the material on record.

3. Learned Standing Counsel for the United India Insurance Company representing the appellant would contend that the policy of insurance was obtained on 21.07.1998 at 15.05 hours, but the subject accident occurred at 4:00 P.M. on 20.07.1998; that there was no valid policy of insurance on the date of occurrence of the subject accident and that the Tribunal had tagged the liability against the appellant/insurer without there being a valid policy of insurance and hence, prays to set aside the impugned order. He also contended that grant of interest at 9% per annum is excessive and prays to reduce the same.

4. On the other hand, learned counsel appearing for the 1st respondent/claimant would contend that the proposal form was submitted and premium was paid on 20.07.1998, which was received on that day around 3:05 P.M; that the Tribunal had elaborately dealt with this aspect and relying on the decision reported in **National Insurance Company Limited vs. Jagarnath & Others** [1(2003) ACC 671 of Madhya Pradesh High Court], the Tribunal rightly held that there is a privity of contract and the insurance company is liable to pay the compensation; that there is no infirmity in the impugned order; that the rate of interest granted is also reasonable; that there are no circumstances to interfere with the same and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel on both sides, the points that arise for determination are:

> ***"1. Whether the insurer be made liable to pay the compensation? and***
> ***2) Whether the grant of compensation to the claimant is excessive?"***

6. **<u>POINT No.1</u>**:-

Admittedly, the claimant/insured has submitted the proposal form and paid the premium of Rs.587/- for issuance of policy on 20.07.1998 at 3:05 P.M. whereas the subject accident also occurred on 20.07.1998 at 4:00 P.M. The policy of insurance was issued in the instant case on the next day i.e., on 21.07.1998. Had there been any objection and non-compliance of requirement on the part of the insured, there is justification on the part of the insurer in postponing the issuance of policy of insurance. In the present case, there are no such circumstances. The appellant/Insurance Company received the premium before occurrence of the subject accident. In such event, it binds the Insurance Company. The Tribunal had rightly relied on the above referred decision of the Madhya Pradesh High Court and tagged the liability against the appellant/insurer. There is no infirmity in the impugned order. There is nothing to take a different view.

7. **POINT No.2**:- As far as the assessment of compensation of Rs.32,000/- is concerned, the Tribunal assigned reasons and granted the same. As regards the rate of interest, it is apt to refer to a decision of the Apex Court in **Dharampal Vs. State Road Transport Corporation**[1], wherein the Apex Court awarded interest @ 7.5% per annum on the amount awarded as compensation. In the instant case, the Tribunal granted interest @ 9% per annum, which is excessive. Hence, the quantum of compensation of Rs.32,000/-, which was awarded by the Tribunal in favour of the 1st respondent/claimant, is confirmed, but the rate of interest awarded thereon is reduced from 9% per annum to 7.5% per annum. The other terms of the impugned order remain unaltered.

8. In the result, the appeal is partly allowed. There shall be no order as to costs.

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

DR.JUSTICE SHAMEEM AKTHER

Date : 23.07.2018
AMD

[1] MANU SC 7680 2008

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