THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2917 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-Insurance Company aggrieved by the order dated 24.03.2005 in O.P.No.269 of 1999 on the file of the Motor Accident Claims Tribunal-cum-V Additional District Judge (Fast Track Court), Anantapur (for short 'the Tribunal').

2. Heard the learned Standing Counsel for appellant-Insurance Company, the learned counsel for respondents-claimants and perused the record.

3. Learned counsel for the appellant-Insurance Company would contend that the cheque issued in respect of the premium was dishonoured and the insured was intimated of the same prior to the date of accident, and that acknowledgments were filed and evidence was also led to that effect. He relied on the decision of the Supreme Court reported in *United India Insurance Company Limited v. Laxmamma and others*[1] and also the judgment dated 08.07.2017 passed by this Court in M.A.C.M.A.No.2522 of 2005, wherein the liability of the Insurance Company was absolved, and ultimately prayed to allow the appeal.

4. On the other hand, the learned counsel for the respondents would contend that the cancellation of insurance policy was not intimated to the owner and it was also not intimated to the Road Transport Authorities concerned. There is violation of mandate

[1] (2012)5 SCC 234

prescribed under Section 147 of the Motor Vehicles Act, and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the point that arises for determination is, whether the compensation granted against the appellant and the owner of the offending vehicle jointly and severally is sustainable?

6. In *United India Insurance Company Limited's* case (1 supra), it was held that

> "In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.
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> Having regard to the above legal positions, insofar as the facts of the present case are concerned, the owner of the bus obtained the policy of insurance from the insurer for the period 16-4-2004 to 15-4-2005 for which premium was paid through cheque on 14-4-2004. The accident occurred on 11-5-2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13-5-2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on 21-5-2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy the award of compensation passed in favour of the claimants."

7. This Court, while dealing with M.A.C.M.A.No.2522 of 2005, which has arisen from the subject accident, has set aside the direction given by the Tribunal against the appellant-Insurance Company to pay the compensation and allowed the appeal filed by the Insurance Company *vide* order dated 08.07.2016.

8. In the instant case, the appellant-Insurance Company examined R.W.1 and got marked Ex.B1-copy of insurance policy, Ex.B2-bounced cheque No.619245 issued by respondent No.1/owner, cheque account No.CA/1/12, Ex.B3-letter from SBI, Urvakonda to Andhrar Bank dated 24.4.1997, Ex.B4-cheque return intimation issued by SBI, Urvakonda dated 24.4.1997 and Ex.B5-copy of letter dated 06.05.1997 addressed by appellant/insurer to respondent no.1/owner along with postal acknowledgement.

9. As per the evidence adduced on behalf of the appellant-Insurance Company, the subject policy was obtained from the appellant-insurance company by the respondent/owner of the offending vehicle tendering Ex.B2-cheque dated 11.04.1997. Duration of the policy under Ex.B1 was from 13.04.1997 to 12.04.1998. On presentation, the cheque was dishonoured on 24.04.1997 for insufficiency of funds. The same is evident from the intimation and memo of the Bank marked as Exs.B3 and B4. On that, the appellant/insurance company informed the respondent/owner of the offending vehicle vide letter dated 06.05.1997 with regard to the dishonour of the cheque and cancellation of the policy of insurance. Ex.B5 is copy of the letter along with postal acknowledgement showing service of the said letter on the owner of the offending vehicle on

15.05.1997. There is specific evidence of R.W.1, who is an employee of the appellant/insurance company to the above effect and through him the above documents were got marked in the course of trial before the Tribunal. The date of occurrence of the subject accident is 18.10.1997, which is after cancellation of the policy of insurance and also due intimation thereof to the owner of the vehicle with regard to dishonour of the cheque and cancellation of the policy of insurance. Therefore, the insurance policy was cancelled much before the occurrence of accident.

10. Learned counsel for the respondents-claimants relied on a decision reported in *Oriental Insurance Company Limited vs. Inderjit Kaur and others*[2], wherein a policy was issued and when a cheque was issued towards the premium, it was dishonoured, but the insurer neither took any steps to cancel the policy of insurance nor intimated the owner of the offending vehicle about the dishonour of the cheque before occurrence of the accident. In those circumstances, the Apex Court held that the insurer was liable to pay the compensation to the accident victims.

11. In the instant case, there is intimation with regard to dishonour of the cheque and cancellation of policy of insurance much before the occurrence of accident. The policy was taken in May 1997 and the accident occurred on 18.10.1997. The application of Section 147 of Motor Vehicles Act has been elaborately dealt by the Apex Court in *United India Insurance Company's case* (1 supra).

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[2] 1998 ACJ 123

12. So, in view of the facts and circumstances of the case, there is valid cancellation of policy of insurance much before the date of accident. In view of the same, the decision relied on by the learned counsel for the respondents-claimants has no application to the instant case. When there is valid cancellation of policy of insurance, liability cannot be fastened against the appellant-insurance company. The Tribunal had not dealt all these aspects and erroneously fastened the liability against the appellant-insurance company. Hence, the appellant-insurance company can be exonerated from the liability fastened against it.

13. In the result, the appeal is allowed setting aside the impugned order exonerating the liability fastened against the appellant-Insurance Company.

The Miscellaneous Petitions, if any, pending shall stand closed. No costs.

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Dr. SHAMEEM AKTHER, J

16.08.2018
Ssp/DRK