THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.409 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-claimant aggrieved by the order dated 01.11.2004 in M.V.O.P. No.426 of 1999 on the file of the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge, Guntur (for short 'the Tribunal') seeking enhancement of compensation awarded by the Tribunal and to tag liability against respondent-insurer.

2. Heard the learned counsel for appellant-claimant, the learned counsel for respondents-insurance company and perused the record. Appeal against respondent no.1-owner of the offending vehicle was dismissed for default on 02.01.2012.

3. The learned counsel for the appellant would contend that the cancellation of insurance policy was not intimated to the owner; that as against the claim of Rs.6,00,000/-, the Tribunal granted compensation of Rs.2,23,200/-, which is meagre; that the Tribunal granted meagre compensation on other heads, and ultimately, prayed to allow the appeal.

4. Learned counsel for the respondent-Insurance Company would contend that the Tribunal had taken all

the factors into consideration and granted just compensation. He further contended that the there was no policy of insurance for the offending lorry as on the date of the subject accident; that the cheque issued to obtain policy of insurance was dishonoured and the same was intimated to the owner of the offending vehicle; that there is ample evidence to substantiate the same, and considering the same, the Tribunal rightly dismissed the claim against respondent-insurer, and there are no grounds to interfere with the impugned order.

He relied on the decision of the Supreme Court reported in ***United India Insurance Company Limited v. Laxmamma and others***[1] in support of his contention.

5. In view of the submissions made by both sides, the points that arise for determination are, (i) whether the appellant/claimant is entitled for enhancement of compensation ? & (ii)Whether a direction be given to the respondent-insurer to pay the compensation amount ?

6. As per the evidence on record, one Madala Satyanarayana(deceased), who is son of the appellant-claimant, died in a road accident due to rash and negligent driving of driver of lorry bearing registration No.C-11 7646 on 05.10.1998. There is oral and documentary evidence

[1] (2012)5 SCC 234

to substantiate the same. The Tribunal rightly held the same and there is nothing to take a different view.

7. There is record to show that on the date of death, the deceased was aged 20 years and unmarried. According to the appellant-claimant, the deceased was managing travel business and said to be earning Rs.10,000/- per month. The Tribunal, considering the facts and circumstances of the case, took monthly income of the deceased at Rs.2,400/-, deducted 1/3rd thereof towards personal expenses of the deceased and after applying appropriate multiplier, granted Rs.2,11,200/- towards loss of dependency. The Tribunal granted Rs.10,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. In all, the Tribunal awarded compensation of Rs.2,23,200/-. The Tribunal considered the cost of living and earning capabilities on those days. In view of the nature of occupation and age of the deceased, the Tribunal rightly took the monthly income and awarded the compensation. There is nothing to deviate therefrom.

8. The other contention of the appellant-claimant is that the Tribunal erred in not tagging the liability on the respondent-insurance company. In ***United India Insurance Company Limited v. Laxmamma and others***

case (1 supra) relied on by the learned counsel for the respondent-insurance company, it was held thus:

> "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.
>
> 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."

9. In the instant case, the respondent-Insurance Company examined R.W.1 and got marked Ex.B1-copy of letter addressed to the insured dated 12.11.1997; Ex.B2-cover certified by the Divisional Manager, Guntur; Ex.B3-acknowledgement; Ex.B4-copy of insurance policy and Ex.B5-cancellation endorsement of the said policy.

10. As per the evidence adduced on behalf of the respondent-Insurance Company, the subject policy was obtained from the respondent-insurance company by the respondent-owner of the offending vehicle for the period from 05.11.1997 to 04.11.1998 by tendering a cheque. As per the evidence of R.W.1 and the documents filed on behalf of the respondent-insurance company, the cheque was dishonoured for want of sufficient funds in the account of the owner of the offending vehicle. On 12.11.1997, the owner was intimated about the dishonour of the cheque vide Ex.B1-letter. Ex.B3 shows service of notice on the owner of the offending vehicle on 10.12.1997. Ex.B5 is the cancellation endorsement of the said policy due to bounding of the cheque issued for payment of premium. Under Ex.B1, there is specific mention with regard to

dishonour of the cheque and cancellation of the policy of insurance. The date of occurrence of the subject accident was on 05.10.1998. Cancellation of the policy of insurance was informed to the owner of the offending vehicle much before occurrence of the subject accident. From the oral and documentary evidence adduced on behalf of the respondent-insurance company, it is clear that no policy of insurance was in force as on the date of occurrence of the subject accident. The facts of the instant case are similar to the case in ***United India Insurance Company Limited v. Laxmamma and others*** case (1 supra). In view of the same, no liability can be fasted on the insurance company.

11. Learned counsel for the appellant-claimant 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

---

[2] 1998 ACJ 123

insurer was liable to pay the compensation to the accident victims.

12. 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 not in force on the date of the subject accident. 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. The decision relied on by the learned counsel for the appellant-claimant 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, while dealing with the case, elaborately discussed and rightly dismissed the claim against respondent-insurance company. There is nothing to take a different view.

13. In the result, the appeal is dismissed.

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

Dr. SHAMEEM AKTHER, J

07.09.2018
DRK

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.409 OF 2005

07.09.2018

DRK