THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3536 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 28.09.2002 in M.V.O.P.No.184 of 1998 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Srikakulam (for short 'the Tribunal').

2. Heard the learned Standing Counsel for appellant-insurance company and the learned counsel for the respondent-claimant and perused the record.

3. Learned Standing Counsel for the appellant-insurance company would contend that the accident occurred on 01.11.1997, but insurance policy was taken on 03.11.1997. Ex.B6 is the cover note, which shows the same. Ex.B1 is the cheque, dated 03.11.1997 given towards premium of the insurance policy. The said cheque was returned as dishonoured. Thereafter, the cover note dated 03.11.1997 was also cancelled. Without adverting to the factual aspects, relying on Ex.A3-copy of MVI report, the Tribunal held that there was valid insurance policy in respect of the offending bus bearing No.OSG 4415 and fastened the liability against the appellant-insurance company, which is erroneous and ultimately, prayed to set aside the impugned order passed against the Insurance Company.

4. Learned counsel for the respondent-claimant would contend that under Ex.B5, the policy was in force between 04.04.1997 and 03.04.1998. The Tribunal was justified in relying on Ex.A3-copy of MVI report and directing the appellant-insurance company to pay the

compensation awarded. There is no infirmity in the impugned order and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both sides, it is pertinent to note that there is no dispute with regard to the involvement of bus bearing No.OSG 4415 in the accident that occurred on 01.11.1997.

6. On a perusal of Ex.B1-cheque, it is clear that the same is dated 03.11.1997. There is also other record to show the same. However, the said cheque was dishonoured for want of sufficient amount in the account of the payee. Ex.B6 is the cover note dated 03.11.1997, which shows that the insurance policy obtained in respect of the said vehicle was cancelled. There is ample evidence on record to substantiate the same.

7. MVI report is not a conclusive evidence to find out, whether there is insurance policy. The Court has to examine the record, such as, cover note, insurance policy, etc. In the instant case, the cover note is dated 03.11.1997 (Ex.B6) i.e., subsequent to the date of accident (01.11.1997). In view of the same, the Tribunal ought not placed reliance on Ex.A3-MVI report. The Tribunal relying on Ex.A3-MVI report held that there is valid insurance on the date of occurrence of accident. Under these circumstances, it is held that there was no insurance to the offending bus on the date of accident i.e., 03.11.1997, so the impugned order passed by the Tribunal against the appellant-insurance company is liable to be set aside.

8. In the result, the appeal is allowed and the impugned order dated 28.09.2002 passed in M.V.O.P.No.184 of 1998 by the Tribunal against the appellant-insurance company is set aside.

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

Dr. SHAMEEM AKTHER, J

Date: 04.09.2018
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