THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1872 OF 2005

JUDGMENT:

This appeal is filed by the appellant-Insurance Company under Section 173 of the M.V. Act, aggrieved by the order, dated 10.06.2005, in O.P.No.148 of 2004 (old O.P.No.1416 of 2002), passed by the Motor Accident Claims Tribunal-cum-II Addl. District Judge, Nalgonda at Suryapet, wherein compensation of Rs.42,000/- with interest at 9% p.a. was granted to the claimant.

2. Heard learned standing counsel for the appellant-Insurance Company, the learned counsel for the respondent-claimant and perused the record.

3. Learned counsel for the appellant-Insurance Company would contend that a cheque, which was given towards premium for the subject insurance policy was dishonoured and the same was intimated to the owner of the lorry bearing No.AP-16-W-8241 in advance. The accident occurred 10 months from the date of dishonour of the cheque and intimation. The Tribunal had not appreciated all the facts and circumstances and relying on the judgment of the apex Court in **ORIENTAL INSURANCE COMPANY LIMITED V INDERJIT KAUR AND OTHERS** [1] tagged the liability against the appellant-insurer without adverting to the facts and circumstances of the case, which is erroneous and ultimately, prayed to set aside the order passed by the Tribunal.

4. On the other hand, learned counsel for the respondent-claimant would contend that the Tribunal after

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[1] 1998 ACJ 123

analyzing the entire evidence and relying on the facts and circumstances of the case and decision referred by the counsel for the claimant, had rightly made the Insurance Company liable to pay compensation along with owner. There is no infirmity in the order passed by the Tribunal. There are no circumstances to interfere with the same and ultimately, prayed to dismiss the appeal.

5. In view of the contentions put forth by both sides, the only point for determination is whether the appellant-insurer can be made liable to pay compensation to the respondent-claimant?

6. It is evident from the record that policy of insurance was issued in favour of the offending lorry bearing No.AP-16-W-8241 pursuant to the cheque, dated 08.06.2001 given by the insured marked as Ex.B5 in favour of the appellant-Insurance Company. As per Ex.B6-copy of letter, dated 29.06.2001, the insured was intimated about the dishonour of cheque-Ex.B5 vide memo Ex.B4, dated 25.06.2001 and also cancellation of policy of insurance. Ex.B4, dated 25.06.2001-cheque return memo issued by the Bank is also placed on record to show the return of cheque. In the instant case, the policy was issued covering the offending vehicle on 08.06.2001. As per the evidence on record, the respondent-injured suffered injuries on 21.04.2002 i.e., much after issuance of the cheque and cancellation of insurance policy, vide letter marked as Ex.B6, dated 29.06.2001. In *Inderjit Kaur's* case (cited supra), the cheque issued towards premium was dishonoured. Insurance Company sent letter to the insured stating that the cheque had not been encashed and before the premium was paid in cash, the subject accident

occurred. Therefore, the Apex Court made the insurer liable to pay compensation. In the instant case, the cancellation of policy was informed to the insured vide letter marked as Ex.B6, dated 29.06.2001 and the subject accident occurred about 10 months after the said letter i.e., on 21.04.2002. It is apt to refer to an unreported decision dated 06.12.2017 of the Apex Court rendered in *Smt. Shanthamma & another v. United India Insurance Company Limited & another* (Civil Appeal No.20927 of 2017) wherein the accident occurred after cancellation of the policy of insurance, the Apex Court directed to pay and recover in case of gratuitous passenger in exercise of the jurisdiction of the Apex Court under Article 142 of the Constitution of India. In the instant case, such order cannot be passed by this Court as there was no policy of insurance as the same was being intimated to the insured much before the occurrence of the accident. No liability can be tagged against the appellant-Insurance Company.

7. Accordingly, the Appeal is allowed. The order, dated 10.06.2005, in O.P.No.148 of 2004 (old O.P.No.1416 of 2002), passed by the Motor Accident Claims Tribunal-cum-II Addl. District Judge, Nalgonda, is set aside against the appellant-Insurance Company. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

DR.SHAMEEM AKTHER, J

DATED: 27-06-2018
Hsd