THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3347 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 27.09.2005 in O.P.No.199 of 2001 on the file of the Motor Accident Claims Tribunal-cum-Principal District Judge, East Godavari District, Rajahmundry (for short 'the Tribunal').

2. Heard the learned Standing Counsel for appellant-Insurance Company and perused the record.

3. Though the matter is posted 'for orders', there is no representation for 1st respondent-claimant and 3rd respondent-owner. This appeal is of the year 2005. Hence, it can be disposed of on merits basing on the material available on record.

4. Learned counsel for the appellant-Insurance Company would contend that the cheque was given towards payment of premium to obtain the policy and the said cheque was dishonoured. Then the insurance policy was cancelled. It was informed to the owner of the offending vehicle. The subject accident took place on the date of cancellation of insurance policy. The insurance policy was taken by the owner of the offending vehicle on 25.04.2000 at 17:00 hours. It is evident from Ex.B8-copy of insurance policy. The Tribunal relying on the decision rendered in *Oriental Insurance Company v. Inderjit Kaur*[1], held that the appellant-insurance company is liable to pay the compensation along with respondent No.3-owner of the vehicle. Since there is a specific mention in the insurance policy about the time of

---

[1] AIR 1998 SC 588

commencement of policy, the decision rendered in *Inderjit Kaur*'s case has no application to the instant case and ultimately, prayed to set aside the impugned order passed against the appellant-insurance company.

5. The only point that emerges for determination is, whether the compensation awarded against the appellant-insurance company is sustainable?

6. Admittedly, the accident occurred on 25.04.2000 at 4.45 a.m. at Shakti Gas Company godown, Ramachandrapuram. Ex.B8-copy of insurance policy reveals that the insurance policy was taken on 25.04.2000 at 17:00 hours i.e., subsequent to the occurrence of accident. There is also evidence to hold that the insurance policy was taken for the offending vehicle by issuing a cheque towards premium, which was dishonoured, the same was intimated to the owner of the vehicle *vide* letter dated 28.03.2000. There are also postal receipts showing the service of cancellation of insurance policy to the owner of the vehicle and the RTO concerned under Exs.B6 and B7, dated 30.03.2000. When the owner went to the office of the insurance company and obtained insurance policy on 25.04.2000, it establishes the knowledge of cancellation of policy, in respect of, the offending vehicle bearing No.KA 20-4144, which was obtained by issue of dishonoured cheque. It is appropriate to state that in *Inderjit Kaur*'s case, there was no time of commencement of insurance policy, but in the instant case, there is a specific mention of time of commencement of insurance policy i.e., with effect from 17:00 hours on 25.04.2000. In view of the same, since the accident

occurred before obtaining the insurance policy, the Tribunal ought not have fastened the liability against the appellant-insurance company. The finding of the Tribunal to that effect is erroneous and liable to be set aside.

7. In the result, the appeal is allowed and the impugned order dated 27.09.2005 passed in O.P.No.199 of 2001 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
ssp