THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3010 OF 2005

JUDGMENT:

This appeal is filed by the appellants-claimants under Section 173 of the Motor Vehicles Act, 1988 aggrieved by the order, dated 10.08.2005 in M.V.O.P.No.122 of 2002 passed by the Motor Accidents Claims Tribunal-cum-VII Additional District Judge, East Godavari at Kakinada (for short, 'the Tribunal') whereby the Tribunal granted compensation of Rs.1,00,000/- to the appellants/claimants against respondents 1 and 2, who are driver and owner of the offending vehicle, and dismissed the claim petition as against respondent No.3/insurance company.

2. Heard learned standing counsel for the appellants-claimants, the learned counsel for the respondent-insurance company and perused the record.

3. Learned counsel for the appellants-claimants would contend that there was no statutory notice as contemplated under Section 138 (b) of the Negotiable Instruments Act, 1881 issued to the owner of the offending vehicle; that the respondent-insurance company cannot cancel the policy of insurance without properly intimating the owner of the vehicle; that the notice sent by the respondent-insurance company was not delivered to the owner and copy of the notice was not filed; that the Tribunal erroneously dismissed the claim against the respondent-insurance company, and ultimately prayed to tag the liability against the respondent-insurance company.

4. On the other hand, learned counsel for the respondent-insurance company would contend that the

cheque issued by the owner of the offending vehicle was bounced and the same was intimated to the owner; that there is ample evidence to substantiate the same; that the Tribunal rightly analyzed the entire evidence and dismissed the claim against the insurance company and there is nothing to take a different view, 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 respondent-insurer can be made liable to pay compensation to the appellants-claimants?

6. To substantiate the same, R.W.1-employee of respondent-insurance company was examined. As per the evidence placed on record, insurance policy was taken by the owner of the offending vehicle viz. oil tanker bearing registration No.AP16X 5879, on 30.1.2001 and it was valid for a year. For payment of the premium for the insurance policy, owner of the offending vehicle had issued Ex.B1-cheque bearing No.0636333 on 29.01.2001, which was returned vide Ex.B2-Memo dated 01.02.2001. Thereafter, the respondent-insurance company addressed original of Ex.B3-letter dated 06.02.2001 canceling the policy. Ex.B4 is copy of letter addressed Road Transport Authority, Vijayawada (R.T.A.). Exs.B3 and B4 letters were dispatched under Ex.B5-postal acknowledgements. Ex.B6 is postal acknowledgement received from R.T.A. for service of the letter of cancellation of policy. The subject accident occurred on 31.12.2001, much after cancellation of the insurance policy. The aforesaid evidence shows the dishonour of the cheque given by the owner of the offending vehicle for payment of insurance premium, cancellation of the insurance policy by the insurer and intimation given to the vehicle owner as well as RTA concerned. So, there is no payment of premium

amount. The agreement between the parties is with regard to the insurance, is void. Therefore, no liability can be tagged against the insurer.

7. On this aspect, it is apt to refer to the decisions in ***National Insurance Company Limited v. Seema Malhotra***[1] and ***United India Insurance Company Limited v. Parvathi Ramachandram***[2] wherein the Hon'ble Apex Court and this Court had taken a similar view.

8. In ***Seema Malhotra & others*** case (1 supra), the insured died in the accident and his dependants viz.wife and children, claimed compensation. The Hon'ble Apex Court held that when the insured failed to pay premium promised or when the cheque issued by him towards premium is returned dishonoured by the bank concerned, the insurer need not perform his part of the promise and the corollary is that the insured cannot claim performance from the insurer in such a situation, and consequently, the appeal filed by the insurance company was allowed setting aside the direction given by the High Court concerned to pay compensation.

9. In ***Parvathi Ramachandram'***s case (2 supra), this Court, having referred to various decisions of the Apex Court as well as this Court, held that inasmuch as the cover note issued by the insurer was cancelled on account of dishonour of the cheque issued by the insured, the insurer cannot be made liable to pay compensation payable to the accident victim.

10. In the instant case, the accident occurred more than 10 ½ months after the cancellation of policy of insurance. There was no contractual obligation. Moreover,

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[1] (2001)3 SCC 151
[2] 2007 LawSuit (AP) 79=2008 ACJ 2495

any contract without consideration is void. The decisions cited supra hold the ground and are squarely applicable to the facts and circumstances of the case on hand. In view of the same, no liability can be tagged against the appellant-insurance company.

The Tribunal had elaborately dealt with the issue and recording findings to this effect. There is no infirmity to take a different view. The appeal is devoid of merit and is liable to be dismissed.

11. The appeal is, accordingly, dismissed. No costs. Miscellaneous Petitions pending, if any, in the appeal shall stand closed.

DR.SHAMEEM AKTHER, J

03.07.2018
DRK

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