THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1692 of 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988, by the appellant-Insurance Company aggrieved by the order dated 01.04.2005 passed in O.P.No.238 of 2000 on the file of the Motor Accident Claims Tribunal-cum-II Additional District Judge (Fast Track Court-1), Khammam (for short 'the Tribunal').

2. Heard the learned Standing Counsel for 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 cover note was issued by the appellant-Insurance company covering the risk of the offending vehicle bearing No.TN 45A 6232. As the cheque issued by the insured in favour of insurer was dishonoured, the cover note was cancelled by way of letter dated 21.01.1998. It was duly intimated to the insured. The Tribunal, without adverting to the same, tagged liability against the appellant-insurer, which is unsustainable and ultimately prayed to allow the appeal. In support of his contention, he relied on the decisions reported in *National Insurance Company Limited v. Seema Malhotra*[1] and *United India Insurance Company Limited v. Parvathi*

[1] (2001)3 SCC 151

Ramachandram[2] wherein the Hon'ble Apex Court and this Court had taken a similar view.

4. Learned counsel for the respondent-claimant would contend that the Tribunal after analysing the entire evidence on record, tagged liability against the appellant-insurer, as there was a cover note covering the risk of the offending vehicle and directed the appellant-Insurance Company to pay the compensation at first instance and recover the same from the owner of the vehicle.

5. In view of the submissions made by both sides, the point for determination is, whether the order passed against the appellant-insurer to pay the compensation at first instance and recover the same from the owner of the offending vehicle is sustainable ?

6. As per the evidence placed on record, the cover note was issued for a period from 13.12.1997 to 12.12.1998, pursuant to the cheque given by the owner of the offending vehicle bearing No.TN 45 A 6232. The said cheque was presented by the insurance company and it was dishonoured on 21.01.1998. Consequently, the insurance company had cancelled the cover note *vide* letter dated 21.01.1998 duly intimating the same to the owner of the vehicle. The alleged accident occurred on 15.07.1998 i.e., much after the cancellation of the policy of insurance by way of letter dated 21.01.1998. To substantiate the same, the appellant-insurer

[2] 2007 LawSuit (AP) 79=2008 ACJ 2495

examined its employee as R.W.1 and got marked Ex.B1-cheque, Ex.B2-cheque dishonour letter of the bank and Ex.B3-letter of intimation of cancellation of policy by the Insurance Company to the owner of the offending vehicle. So it goes to show that there was no insurance policy for the offending vehicle as on the date of occurrence of the accident.

7. 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.

8. 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.

9. In the instant case, the accident occurred beyond 60 days after issuance of the cover note i.e., six months after the cancellation of policy of insurance. There was no contractual obligation. Moreover, 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 erroneously directed the appellant-insurer to pay the compensation at first instance and recover the same from the owner. The said finding is unsustainable and as such, the same is liable to be set aside.

10. In the result, the appeal is allowed setting aside the liability fixed by the Tribunal in the impugned order on the insurance company. However, it is made clear that pursuant to the impugned award, if any amount is deposited and withdrawn by the claimant, the insurance company is not entitled to recover the same from the claimant. It is permitted to recover the same from the owner of the offending vehicle in the very same proceedings before the Tribunal by way of filing Execution Application. For the remaining amount, the claimant has to proceed against the owner of the offending vehicle.

Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

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Dr. SHAMEEM AKTHER, J

26th June, 2018
ssp