

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. NO.696 OF 2012

JUDGMENT:

This appeal is preferred by the appellant/Insurance Company questioning the Order and Decree of the Special Judge for Trial of Offences Under SC/ST (POA) Act-cum-V Additional District & Sessions Judge, Medak at Sangareddy (for short, the trial Court) in M.V.O.P.No.22 of 2009, dated 17.11.2011.

2. The brief facts of the case are that on 22.01.2008, while respondent No.1 herein was proceeding on his cycle, and about 12.30 pm., when he reached in front of Edgah at Zaheerabad, car bearing No.MH27H 1839 came from Hyderabad side and dashed him, due to which, he fell down from cycle and received fracture injuries and other grievous injuries. Respondent No.1 herein filed the aforesaid MVOP against the appellant and respondent Nos.2 to 4 herein, claiming compensation of Rs.1,50,000/- for the injuries sustained by him in the said accident.

3. Before the Tribunal, the appellant-Insurance Company filed a counter denying the allegations and contended that as the cheque which was given towards premium of policy was dishnoured and as the policy was cancelled, it has no liability to pay the compensation and prayed to dismiss the claim petition.

4. Before the Tribunal, respondent No.3 filed a separate counter stating that on the date of the accident, he was not the owner of the offending vehicle as he sold the same on 03.04.2007 to respondent

No.4 and that though respondent No.4 issued Ex.B.1-cheque dated 12.02.2007, for the premium to the appellant, the appellant without perusing the RC, issued policy in his (respondent No.3) name and sought to dismiss the petition.

5. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the car and awarded total compensation of Rs.26,000/- under various heads, with interest at the rate of 7.5% per annum. Aggrieved by the said order, the appellant/Insurance Company filed the present appeal.

6. Heard.

7. Sri A.Rama Krishna Reddy, learned counsel for the appellant, submitted that the policy issued in respect of the offending vehicle was cancelled due to dishonour of cheque and therefore, the appellant is not liable to pay the compensation to the claimant (respondent No.1 herein).

8. It is clear from the record that respondent No.3 was the owner of the offending vehicle and he sold the same to respondent No.4 on 03.04.2007. After purchase, the ownership of the offending vehicle was transferred to respondent No.4 on 03.04.2007. Respondent No.4 issued Ex.B.1-cheque, in favour of the appellant for payment of premium amount and the appellant issued policy in the name of respondent No.3, since by that date,

the name of respondent No.3 was reflecting as the owner of the car. When the appellant presented Ex.B.1-cheque, for presentation, it was dishonoured vide Ex.B.2-bank cheque return memo. The appellant sent Ex.B.4-notice to respondent No.3, on whose name policy was issued, and also to Regional Transport Officer, Bandra, intimating about the dishonour of the cheque and also cancellation of the policy. Thereafter, the accident occurred on 22.01.2008. But, no evidence was filed on behalf of the appellant to show that Ex.B.4-notice, sent by the appellant was served on respondent No.3 and the RTO, Bandra. Basing on the same, the trial Court came to the conclusion that appellant herein and respondent No.4 are jointly and severally liable to pay the compensation.

9. For the purpose of dealing with payment of premium through cheque and the same is being dishonoured, this Court feels that it is relevant to rely upon the provisions of Section 138 of the Negotiable Act, 1881 and it reads as under:

“138 Dishonour of cheque for insufficiency, etc., of funds in the account:- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.

10. A perusal of Section 138 of the said Act, it is clear that when a cheque issued by a drawer towards discharge of any debt or other liability is dishonoured because of insufficient funds, the payee or the holder of the cheque must make a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. In the present case, though the appellant/insurance company issued Ex.B.4-notice, to respondent No.3 and RTO, Bandra, no evidence was filed by it to show that those letters were served on them. As the appellant failed to inform to respondent No.3 about the information regarding dishnour of cheque and cancellation of policy, it can be construed that the contract between respondent No.3 and the appellant was not cancelled and hence, the appellant cannot avoid its liability of payment of compensation. Hence, the appeal fails and is liable to be dismissed.

11. Accordingly, the Motor Accident Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

T.AMARNATH GOUD, J

Date: 04-09-2019

Note: L.R. Copy to be marked.

B/o.TJMR

