



**THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
AND**

THE HON'BLE SRI JUSTICE V. GOPALA KRISHNA RAO

M.A.C.M.A.No.1672 of 2017

JUDGMENT:- *(Per Hon'ble Sri Justice Cheekati Manavendranath Roy)*

Aggrieved by the impugned order dated 23.11.2016 of the Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge, Guntur passed in M.V.O.P.No.432 of 2013, whereby the Tribunal has dismissed the claim against the 2nd respondent-Insurance Company, the instant appeal has been preferred by the appellants.

2. Facts germane to dispose of the appeal may briefly be stated as follows:

The appellants are the claimants in M.V.O.P.No.432 of 2013. They are the wife, progeny and mother of late Piridi Apparao. On 11.03.2013, about 7.00 a.m., when Apparao was going on his motorcycle from his house to attend his duty, as a fireman in Fire Station of Pamarru, and when he reached near Anjaneya Swamy Temple of Gudiwada on NH-165, a Van bearing No.AP 37 X 3736 driven by its driver in a rash and negligent manner, dashed the motorcycle, on which, Apparao was going. He sustained injuries



in the said accident and succumbed to the said injuries while undergoing treatment in Primary Health Centre, Pamarru.

3. A case in Crime No.50 of 2013 of Pamarru Police Station was registered under Section 304-A of the Indian Penal Code, 1860 (for short "I.P.C.") against the driver of the said van in connection with the said accident. Eventually, after completion of investigation, police found that the accident occurred due to rash and negligent driving of the said van by its driver. So, police filed charge sheet against the driver of the van for the offence punishable under Section 304-A of I.P.C.

4. The appellants, who are wife, children and mother of the deceased Apparao, laid claim for compensation before the Tribunal. They laid the said claim against the owner and driver of the van as 1st and 3rd respondents and against the insurer of the said van i.e. Shriram General Insurance Company Limited, shown as 2nd respondent in the said claim petition.

5. At the culmination of the enquiry, the Tribunal, after considering the evidence on record, and on appreciation of the same, found that the accident occurred due to rash and negligent driving of the van by its driver. Accordingly, recorded a finding to that effect in the impugned order. As the 1st respondent is the



owner of the said van, which involved in the accident, the Tribunal held him liable to pay compensation to the claimants. The Tribunal, after considering the evidence on record and on appreciation of the same, awarded a sum of Rs.35,00,000/- towards compensation to the claimants. However, the liability to pay the compensation is fixed only against the 1st respondent, who is the owner of the van and also on 3rd respondent, who is the driver of the said vehicle. Even though, the said vehicle was insured with the 2nd respondent-Insurance Company, the Tribunal exonerated the Insurance Company from its liability to indemnify the owner of the vehicle. The Tribunal, exonerated the Insurance Company from its liability to indemnify the owner on the ground that the policy for the said vehicle was issued on 08.03.2013 and a cheque was issued by the 1st respondent-owner to the Insurance Company towards payment of premium on the same day and the said cheque was dishonoured and in view of the fact that the cheque was dishonoured and premium was not paid, that the Insurance policy was cancelled on 30.03.2013 and the same was intimated to the 1st respondent-owner of the said vehicle and as such, the Insurance Company is not liable to indemnify the owner.



6. Therefore, aggrieved by the said order of the Tribunal in absolving the 2nd respondent Insurance Company from its liability to indemnify the owner of the vehicle, this Appeal is preferred by the claimants assailing the legal validity of the said order.

7. We have heard learned counsel for the appellants and learned Standing Counsel for the 2nd respondent Insurance Company.

8. Learned counsel for the appellants would vehemently contend that as the policy was issued on 08.03.2013 and accident occurred on 11.03.2013, that the policy was in force at the time of the accident and its subsequent cancellation even on the ground that the cheque that was issued towards payment of the premium was dishonoured is not a valid ground to absolve the Insurance Company from its liability to indemnify its owner. Therefore, he would submit that the Tribunal grossly erred in absolving the Insurance Company from its liability to indemnify the owner. Therefore, he would pray to allow the appeal and make the Insurance Company also liable to indemnify the owner and to pay the compensation to the claimants.

9. Per contra, learned standing counsel for the 2nd respondent-Insurance Company would submit that the policy relates to a



contract between the 1st respondent-owner of the vehicle and the 2nd respondent-Insurance Company and as the cheque that was issued towards payment of premium was dishonoured, it is to be held that there is no consideration paid by the owner of the vehicle and he would submit that any contract without consideration is not a valid contract. He would further submit that as the cheque that was issued towards payment of the premium by the 1st respondent-owner was dishonoured, that immediately the policy was cancelled on 30.03.2013 itself and the said fact was also intimated to the 1st respondent-owner of the vehicle and thereafter, the deceased died on 20.04.2013 after the policy was cancelled and as such, the Insurance Company is not liable to indemnify the owner of the vehicle.

10. Therefore, the paramount question that falls for adjudication in this appeal is whether the fact that the cheque that was issued towards payment of premium for the policy that was taken in respect of the crime vehicle, was dishonoured subsequently and that the policy was cancelled on the ground that the cheque that was issued towards payment of premium was dishonoured, would be a valid legal ground to exonerate the Insurance Company from its liability to indemnify the owner of the said vehicle to pay the compensation to the third parties on



account of the death of Apparao in the motor vehicle accident that occurred due to the negligent driving of the van by its driver.

11. The legal position in this regard is not *res nova* and the same has been well settled. The Apex Court in the case of ***United India Insurance Company Limited v. Laxmamma and others***¹, had an occasion to deal with the similar issue. The question that fell for consideration before the Apex Court in the said case is *whether the appellant-United India Insurance Company Limited (the insurer) is absolved of its obligations to the third party under the policy of insurance because of the cheque given by the owner of the vehicle towards the premium got dishonoured and subsequent to the accident, the insurer cancelled the policy of insurance?*

12. In that case also, the insurer raised a plea that the Insurance policy was issued on 14.04.2004 covering the crime vehicle i.e. the bus involved in the said accident and the policy was issued for the period from 16.04.2004 to 15.04.2005 and as the cheque that was issued towards payment of premium, was dishonoured, that there was no liability on the Insurance Company to cover the third party risk.

¹ (2012) 5 SCC 234



13. It was also contended in the said case by the Insurance Company that the earlier view taken by the Apex Court in the case of ***Oriental Insurance Company Limited v. Inderjit Kaur***² has been diluted by the later decisions of the Supreme Court rendered in the case of ***National Insurance Company Limited v. Seema Malhotra***³ and ***Deddappa v. National Insurance Company Limited***⁴.

14. After considering the earlier Judgments rendered by the Apex Court, in this regard, in ***Oriental Insurance Company Limited v. Inderjit Kaur (2 supra)***, ***National Insurance Company Limited v. Seema Malhotra (3 supra)*** and ***Deddappa v. National Insurance Company Limited (4 supra)*** and after considering the relevant provisions in the Motor Vehicles Act i.e. Sections 147, 149 and also Section 64-VB of the Insurance Act, the Apex Court authoritatively held at para No.26 as follows:

“In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of

² (1998) 1 SCC 37

³ (2001) 3 SCC 151 : 2001 SCC (Cri)443

⁴ (2008) 2 SCC 595 : (2008) 1 SCC (Cri) 517



insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."

15. Then, at para No.27, it is held as follows:

*"Having regard to the above legal position, insofar as the facts of the present case are concerned, the owner of the bus obtained the policy of insurance from the insurer for the period 16-4-2004 to 15-4-2005 for which premium was paid through cheque on 14-4-2004. The accident occurred on 11-5-2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13-5-2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on 21-5-2004. The cancellation of policy having been done by the insurer **after the accident**, the insurer became liable to satisfy the award of compensation passed in favour of the claimants."*

16. The ratio laid down in the above judgment, squarely applies to the present facts of the case. In the instant case also, the policy was issued on 08.03.2013 and the cheque towards payment of premium was issued on the same day i.e. on 08.03.2013. Thereafter, the accident occurred on 11.03.2013. After the accident, the cheque was dishonoured. Thereafter, the Insurance Company cancelled the policy on 30.03.2013 and informed the said fact to the owner of the vehicle. Therefore, as on the date of the accident, the policy was in force and the policy was cancelled subsequent to the accident giving intimation of the same to the



owner. Therefore, the insurer i.e. 2nd respondent is undoubtedly liable as per the law enunciated in the above cited judgment of the Apex Court to indemnify the owner of the vehicle and pay the compensation to the appellants.

17. The Apex Court also did not accept the contention of the Insurance Company in the said case to direct the Insurance Company to first pay the compensation and then to recover it from the owner of the vehicle.

18. Therefore, the Tribunal grossly erred in absolving the Insurance Company from its liability to indemnify the owner of the vehicle. So, it warrants interference in this appeal and the finding of the Tribunal to that effect is liable to be set aside.

19. In fine, the Appeal is allowed setting aside the impugned order of the Tribunal to that extent of exonerating the Insurance Company from its liability. The petition in M.V.O.P.No.432 of 2013 is allowed against the 2nd respondent Insurance Company also. The respondents are jointly and severally liable to pay compensation to the petitioners. The 2nd respondent-Insurance Company is liable to indemnify the owner of the vehicle as the policy was in force as on the date of the accident and to pay the compensation that is awarded by the Tribunal to the claimants.



The 2nd respondent-Insurance Company shall deposit the amount of compensation that is awarded to the claimants with interest along with costs within two (02) months from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

JUSTICE V. GOPALA KRISHNA RAO

Date: 09-05-2023.

Note:

L.R. copy to be marked.

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% Dated 09-05-2023.

Piridi Meenakshi & Ors.

..... Appellants

Vs.

\$ G. Murali Krishna & Ors.

..Respondents

! Counsel for the appellants : Sri G.V.S. Mehar Kumar,
Learned counsel

^ Counsel for the respondents : Sri D.Ravi Kiran,
Learned counsel.

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? Cases referred

1. (2012) 5 SCC 234
2. (1998) 1 SCC 37
3. (2001) 3 SCC 151 : 2001 SCC (Cri)443
4. (2008) 2 SCC 595 : (2008) 1 SCC (Cri) 517

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1. Whether Reporters of Local newspapers may be allowed to see the Judgments? ---
2. Whether the copies of judgment may be marked to Law Reporters/Journals --Yes-
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? -Yes-

JUSTICE CHEEKATI MANAVENDRANATH ROY