IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

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M.A.C.M.A.No.305 of 2017

Between:

The New India Assurance Co.Ltd.,rep. by its
Branch Manager, Nalgonda

..Appellant/R-2

VERSUS

Amrutham Rajasree and others

…Respondents

ORDER PRONOUNCED ON: 16.02.2024

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N. TUKARAMJI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to see the fair copy of the Judgment? : Yes

P.SAM KOSHY,J

N. TUKARAMJI, J

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! Counsel for Appellant/R-2 : Mr. Kota Subba Rao

^Counsel for the respondent(s) : Mr.Chandra Sekhar Reddy Gopi Reddy

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> HEAD NOTE:

? Cases referred

HONOURABLE SRI JUSTICE P. SAM KOSHY
AND
HONOURABLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.305 OF 2017

JUDGMENT: *(per Hon'ble Sri Justice N. Tukaramji)*

We have heard Mr. Kota Subba Rao, learned counsel for the appellant/respondent No.2 and Mr. Chandra Sekhar Reddy Gopi Reddy, learned counsel for the claim petitioners.

2. This appeal has been filed by the respondent No.2/insurance company assailing the liability fastened in the decree and order dated 09.11.2015 in O.P.No.224 of 2009 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nalgonda.

3. The prime contest of the appellant/respondent No.2/insurer (hereinafter 'the insurer') is that as the cheque issued by the insured/respondent No.6 (hereinafter 'the insured') towards premium was dishonoured for want of sufficient funds and the same was intimated to the insured much prior to the accident, the policy stood cancelled, as such, fastening the liability

to indemnify the owner is untenable. Further the cover note of the insurance policy is clearly specifying that the policy would be subject to realization of premium amount, thus the dishonour of the cheque automatically rescinds the insurance contract *ab initio*. Furthermore, as per the Section 64-VB of the Insurance Act, 1938 specifies that the insurer cannot be held liable under the policy unless the premium is received in advance. Therefore, the liability concluded by the tribunal against the insurer is unsustainable in law.

4. The relevant facts of the claimants' case are that on 20.12.2008 at about 6.15 p.m., while Amrutham Manohar/deceased along with his family members was proceeding in Maruthi Wagonor Car bearing registration No. AP-29-AF 6518 (for short, 'the car'), one bus bearing registration No. AP-28-X-0578 came in a rash and negligent manner from opposite direction, dashed the car and caused his instantaneous death. Whereupon the family members of the deceased filed the claim petition seeking compensation of Rs.60 lakhs. The tribunal in the impugned order partly allowed the petition and granted

Rs.44,00,000/- with interest at 7.5% per annum from the date of the petition till the date of realization against the insured and insurer of the bus/respondents 1 and 2.

5. Learned counsel for the insurer would submit that, upon dishonour of the cheque issued for premium amount, the insurance policy/Ex.B-2 stood cancelled *ab initio,* in terms of the categorical note on the policy itself. However the insurer got issued notice/Ex.B-8 on the insured to the address given by him under registered post. Therefore, presumption of service of notice shall be drawn under Section 27 of the General Clauses Act, 1897. Therefore, the insurer had discharged its responsibility and this position has been affirmed in the authority between *Munagala Srinivasa Rao and others v. Rajendra Singh and others – 2010 ACJ 1107.* Additionally pleaded that Section 64-VB of the Insurance Act, 1938 prescribes that insurance company cannot cover the risk under the policy until premium amount is received or is guaranteed from the insured. By placing reliance on judgment in *Deddappa and others v. Branch Manager, National Insurance Company Limited - 2008 ACJ 581* submitted that cancellation of

insurance policy once duly communicated to the insured, the insurer cannot be held liable. However in the peculiar circumstances of that matter, the Hon'ble Supreme Court by exercising extra-ordinary jurisdiction directed the insurer to pay the compensation first and to recover the amount from the insurer. Therefore, implored that the law though harsh, shall be applied without any departure as per the Maxim *'Dura Lex Sed Lex'* and this position has been affirmed in the authorities between *Vijay Narayan Thatte and others v. State of Maharashtra – 2009(6) ALD 59 (SC) and Narayan v. Babasaheb and others – 2016 (3) ALD 217 (SC).* Further solicited that where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality and the courts shall ensure that the injustice is not done to any party and as far as possible substantive right should not be allowed to be defeated on account of curable procedural irregularity. In this regard, cited the judgment in *B. Anil Kumar Reddy v. Margadarsi Chit Fund Limited and others – 2006(2) ALD (NOC) 56.*

6. Learned counsel for the respondents 1 to 5/claim petitioners would submit that the tribunal on considering the plea and the materials placed by the respondent No.2/insurer and by detailed analysis of the evidence, dismissed the insurer's contention. Further by citing the judgment in *United India Insurance Company Limited v. Laxmamma and others – (2012) 5 SCC 234* pleaded that where the insurer had cancelled the insurance policy after the accident on the ground of dishonour of cheque, the insurer was held liable. Similarly in the authority in *National Insurance Company Limited v. Balkar Ram and others – 2013 LawSuit (SC) 823* held that failure in intimation regarding the dishonour of cheque and cancellation of policy before the date of the accident would make the insurer liable to pay compensation. He specifically pleaded that the insured was never been informed as to cancellation of the insurance policy and the notice/Ex.B-8 is not explaining the date of communication, at the same time, it is not clear as to when and how the insurance policy was cancelled. Therefore, the tribunal had rightly held the insurer liable to indemnify the insured.

7. We have considered the rival submissions and perused the materials on record.

8. The insurer's/respondent No.2 contention is in three fold; firstly the dishonour of cheque itself annulled the insurance policy *ab initio*. Nextly, the Section 64-VB of the Insurance Policy makes it clear that unless the premium is received the insurer is not liable. Finally there was clear communication to the insured about the dishnour of cheque about the cancellation of the insurance policy.

9. At the outset the contract of insurance policy/Ex.B-2 was bilateral. Though it is claimed that the disclaimer on the cover note of the insurance policy nullified it *ab initio* and acted upon, invalidating the insurance policy would not arise. However through RW-1 the insurer asserted that the policy was cancelled on 29.07.2008. But no document or endorsement cancelling the policy has been placed on record. Pertinently as per the insurer relied on cheque return memo/Ex.B-5 is dated 30.07.2008. The above dates are making out that the cancellation of policy was even prior to return of cheque. Be that as it may, as there was

retrieval from the insurance contract the insurer must inform the counterpart to the contract, by way of clear communication. For the above noted aspects, the insurer's claim that the disclaimer on the policy itself is sufficient to repudiate the contract is not acceptable.

10. Section 64-VB of the Insurance Act does not prescribe for issuance of notice is also not convincing as the contemplation in the provision was in the context of receiving premium in advance. Once premium is received in advance the situation of issuance of communication about the cancellation of the policy on the ground of non receipt of premium would not arise. Therefore, the claim that the insurer is not under obligation to issue notice does not merit consideration.

11. In regard to communication to the insured about cancellation of the policy on the ground of dishonour of cheque/ premium has not been paid, the RW-1 had asserted that the cancellation was on 29.07.2008 and it was communicated on 04.08.2008. However for the reasons best known to the insurer

the communication dated 04.08.2008 was not brought on to record. On the other hand, got marked Ex.B-8 letter dated 24.12.2013. Notably the date itself is indicating that the letter came into existence after filing of the additional counter in the claim petition. Nonetheless, the averments of this letter are not referring to the letter dated 04.08.2008 and the wording are indicating that the dishonour of cheque and disowning the liability has been communicated in this letter for the first time.

12. In absence of any other materials indicating proper communication by the insurer to the insured before the accident, no other option left but to conclude that the insurer had communicated the insured about dishonour of the cheque and the cancellation of the policy only on 04.08.2008 after the accident. In the similar situation the Hon'ble Apex Court in *New India Assurance Company Limited v. Rula and others – (2000) 3 SCC 195* held that the rights of third party to get indemnified against the insurer of the vehicle remains live, when premium has not been paid and for that reason policy of the insurance was cancelled but communicated subsequent to the accident. Thus the defence of

the respondent No.2/insurer that the policy of insurance is not valid as the cheque was dishonoured, cannot be sustained. In effect, the liability recorded against the insurer, by the tribunal is found perfectly justified and deserves confirmation.

13. In consequence, the appeal is liable to be and is accordingly dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending if any, stands closed.

P. SAM KOSHY, J

N.TUKARAMJI, J

Date:16.02.2024
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