IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+M.A.C.M.A. No.230 OF 2019

% Delivered on: 06-07-2020

Between:

M/s. Liberty General Insurance Limited
(formerly known as M/s. Liberty Videocon
General Insurance Co. Ltd.,), Bangalore,
Karnataka. .. Appellant

Vs.

$ Md. Haseena W/o Late Mohd. Nawaz & others .. Respondents

! For Appellant : Mr. A. Ramakrishna Reddy

^ For Respondent Nos.1 to 4 : Mr.Mahboob Hussain

For Respondent No.5 : - - -

For Respondent No.6 : Mr. Kailashnath P.S.S.

< Gist :

> Head Note :

? Cases Referred :

1. Civil Appeal No.9694/2013, dated 24.11.2017
2. (2001) 3 SCC 151
3. (2008) 2 SCC 595
4. 2011 (4) ALD 254
5. (2012) 5 SCC 234
6. Judgment, dated 26.09.2016 in MACMA Nos.276 of 2009 and 762 of 2016
7. AIR 2008 A.P. 278
8. 2019 (6) ALD 22 (TS)
9. 2017 ACJ 2700

HON'BLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.230 OF 2019

JUDGMENT:

Aggrieved by the award and decree dated 06.09.2018 in M.V.O.P. No.2 of 2015 passed by the Motor Accidents Claims Tribunal - cum - Principal District Judge, Karimnagar (for short 'the Tribunal'), appellant - M/s. Liberty General Insurance Limited preferred the present appeal challenging the liability as well as quantum of compensation.

2. Vide the aforesaid award, the Tribunal has awarded an amount of Rs.5,50,000/- towards compensation with proportionate costs and interest at 7.5% per annum thereon from the date of petition till the date of realization against respondent Nos.1 and 2 jointly and severally as against the claim of Rs.10,00,000/- made by respondent Nos.1 to 4 - claimants for the death of deceased - Mohd. Nawaz caused in a road accident occurred on 04.05.2014.

3. Heard Mr. A. Ramakrishna Reddy, learned counsel for the appellant - Insurer and Mr. Mahboob Hussain, learned counsel for respondent Nos.1 to 4 - claimants and Mr. Kailashnath P.S.S., learned counsel for respondent No.6 - owner of the crime vehicle.

4. The learned counsel for the appellant - Insurer would contend that the Tribunal failed to appreciate the contention of the Insurer that it is not liable to pay compensation to the claimants, because the

cheque issued by respondent No.6 - Owner of the crime vehicle was dishonoured for the reason “Insufficient Funds” and, therefore, as on the date of accident, the policy/cover note issued in favour of the crime vehicle is not in existence. He would further contend that the Tribunal also failed to appreciate the contention of the Insurer that due to dishonour of cheque, the policy was cancelled right from its inception on account of dishonour of cheque issued towards premium, as such, the question of covering the risk does not arise. Without considering the said aspects, the Tribunal gave the finding to pay the compensation amount initially to the claimants and then recover the same from the owner.

5. The learned counsel for the Insurer further contended that the cheque in question was issued on 28.02.2014 by the owner and it was dishonoured on 11.03.2014. Insurer also informed about the dishonour of cheque as well as cancellation of policy through a letter dated 13.03.2014 to the owner as well as the Regional Transport Authority (RTA). Despite the same, owner did not take any steps for payment of premium. But, the Tribunal without appreciating the said aspects gave the aforesaid finding of depositing the compensation initially and recover the same from the owner. Thus, the finding given by the Tribunal that the Insurer has not offered any reason for not presenting the cheque in the bank immediately on receipt of the same is erroneous. As per the provisions of the Negotiable Instruments Act, 1881 (for short ‘N.I. Act’) validity of cheque will be

for three (03) months, and the Insurer can deposit the same within the said period of three (03) months. It is for the drawer of cheque to ensure that instrument is duly honoured on its presentation by maintaining the balance.

6. The learned counsel for the Insurer would also contend that the Tribunal failed to consider that policy exists if the cheque is honoured, and it does not exist in the event of dishonour of cheque. In fact, in the policy, it is specifically mentioned that "in the event of dishonour of cheque(s), insurance cover provided under this documents automatically stands cancelled from inception irrespective of whether a separate communication is sent or not". But, the Tribunal erred in holding that Ex.B1 cover note did not find any such clause that it would automatically stands cancelled in the event of dishonour of cheque. The learned counsel would further contend that as per Insurance Regulatory and Development Authorities (IRDA) (Manner of receipt of premium) Regulations, 2002, exercise of powers under sub-section 163 of Section 64-VB and Section 114A of the Insurance Act, 1938, rules framed in consultation with Insurance Advisory Committee, the IRDA has framed Rule 4, wherein it is clearly stated that the consideration (premium) towards insurance is not realized by the Insurer, the policy shall be treated as void *ab initio.* He has referred to Section 64-VB of the Insurance Act, as per which, no risk to be assumed unless premium is received in advance. He would further submit that the evidence, both oral and documentary,

available on record, would show that the cheque issued by the owner was dishonoured for the reason “insufficient funds”. On getting the cheque return memo from the Bank, the Insurer addressed a letter of intimation about cancellation of policy to the owner as well as the Regional Transport Office (RTO) and the same was received by the owner of the vehicle and RTO concerned. The Tribunal without considering the said aspects and without applying the principles properly, awarded the aforesaid compensation directing the Insurer to pay the compensation amount initially and then recover it from the owner of the crime vehicle.

7. The learned counsel would further submit that the claimants filed an application seeking to amend the claim from Section 166 of the Motor Vehicles Act, 1988 (for short M.V. Act) to 163A of the M.V. Act and the same was allowed by the Tribunal and even then awarded the said amount erroneously.

8. With the aforesaid contentions, the learned counsel for the appellant prayed to set aside the impugned award.

9. On the other hand, the learned counsel appearing on behalf of the claimants would contend that the Tribunal has rightly considered the entire evidence, both oral and documentary and gave a finding that there is fault on the part of the Insurer also. Though the cheque was issued by the owner on 28.02.2014, it was presented only on 11.03.2014 and in fact, as on 07.03.2014, there was balance in the

account of the owner as admitted by RW.2, Manager of the Bank. He would further contend that the Insurer did not intimate about the cancellation of the policy to the owner of the crime vehicle as well as RTO. According to the claimants, being third parties they are not concerned with the above said aspects and it is between the Insurer and the Insured. The Tribunal considering the entire material only awarded the above said amount fastening the liability on the Insurer to pay and recover the same from owner of the vehicle.

10. With the said contentions, the learned counsel for the claimants would pray to dismiss the appeal.

11. Mr. Kailashnath P.S.S., learned counsel appearing on behalf of the owner, would submit that respondent No.6 - owner has issued the cheque on 28.02.2014 towards payment of premium and there was sufficient amount available in his account till 07.03.2014 as deposed by RW.2. He would further submit that the Insurer neither presented the cheque on or before 07.03.2014, nor intimated about the dishonour of the cheque as well as cancellation of policy. Thus, the contention of the Insurer that it is not liable to pay the compensation is unsustainable.

12. With the above said contention, the learned counsel for the owner sought to dismiss the appeal.

13. Perused the entire material available on record. Though the Tribunal directed the Insurer to pay the compensation of Rs.5,50,000/-

along with interest and proportionate costs at the first place and recover the same from respondent No.6, the owner of the crime vehicle did not prefer any appeal challenging the said finding. Therefore, the said finding insofar as the owner is concerned, has attained finality.

14. It is also not in dispute that originally the claimants have laid the claim petition under Section 166 of the M.V. Act and, thereafter, filed an application vide I.A. No.787 of 2018 seeking amendment of provision of law from 166 of the Act to 163A of the Act. The said application was allowed on 10.08.2017 by the Tribunal. Thereafter, the Tribunal proceeded with adjudication of the claim petition under Section 163A of the M.V. Act and, accordingly, awarded the aforesaid compensation.

15. As stated above, the claim was under Section 163A of the M.V. Act, in which case, there is no need to the claimants to prove the negligence on the part of the driver of the crime vehicle. In order to prove the accident, the claimants have examined claimant No.1, wife of the deceased as PW.1 and also examined the eye-witness as PW.2. In support of the case of the claimants, they have also filed documents marked as Exs.A1 to A6, which are certified copies of FIR, inquest report, post-mortem examination report, MVI Report, form No.54 and charge sheet.

16. It is the specific contention of the claimants that on 04.05.2014 at about 4.00 p.m., the deceased along with one Are Srinivas was proceeding on his motorcycle bearing registration No.AP 15AQ 1013 and by the time they reached NTR Statue, Karimnagar, he tried to overtake a bus. In that process, the deceased hit the lorry bearing registration No.AP 28TD 4095 and thus the accident took place. It is the further contention of the claimants that the lorry was parked negligently in front of Raja Mess without indicators and the driver of the lorry did not take any precautions in parking the lorry. Therefore, the accident had occurred due to negligence of the driver of the lorry.

17. Respondent Nos.5 and 6, driver and owner of the crime vehicle, filed their respective counters denying the compensation. Both of them pleaded that on account of negligence on the part of the deceased only the accident had occurred. According to the owner, the deceased came from back side of the lorry and hit the same on its back and received injuries. Thus it was the negligence of the deceased in riding the motorcycle and also for the accident. Therefore, respondent No.6, owner of the vehicle is not liable to pay compensation. However, both owner and insured finally pleaded that since the vehicle was insured with the Insurer, if any compensation is to be paid to the claimants, it is for the Insurer to pay the same. They are not liable to pay any compensation. Whereas, Insurer in the counter denied its liability, mainly on account of dishonour of cheque issued

by the owner towards premium amount and, thus, it is not liable to pay the compensation.

18. In view of the rival submissions, the Tribunal has framed the following issues:

i) Whether the accident had occurred due to rash and negligent driving of the Lorry bearing No.AP-28-TD-4095 by its driver?

ii) Whether the petitioners are entitled to compensation, if so, to what amount and from which of the respondents?

iii) To what relief?

19. The Tribunal has also framed additional issue as under:

> Whether the petitioners are entitled for compensation under Sec.163-A of M.V. Act?

20. The Tribunal after considering the evidence of PWs.1 and 2 and Exs.A1, A4 and A5, gave a finding that as seen from the cross-examination of PW.2, said to be an eye-witness to the accident, the deceased while riding his motorcycle wanted to overtake a bus which was proceeding ahead of him and it is on the left side and thereby dashed against the crime lorry parked. However, it is the case of claimants that it is not specifically suggested to PW.2 that the crime lorry parked at the accident spot was on the road margin but not on the road. The Tribunal further held that may be true, overtaking of a vehicle must be from right hand side but not from left side. However, the Tribunal relying upon the principle held by the Hon'ble Apex Court in **United India Insurance Co. Ltd., v. Sunil Kumar**[1],

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[1]. Civil Appeal No.9694/2013, dated 24.11.2017

wherein it was held that it is not open for the Insurer to raise any defence of negligence on the part of the victim in a claim petition under Section 163A of M.V. Act. The Tribunal further observed that since Section 163A of M.V. Act is based on the concept of 'no fault liability' and is enacted as a measure of social security, the Tribunal is of the view that the said issue would not at all arise for consideration. Thus, as stated supra, in an application under Section 163A of M.V. Act, claimants need not prove the negligence of the driver of the offending vehicle. May be for the said purpose, the claimants might have filed an application seeking to amend the provision of law from Section 166 of the M.V. Act to 163A of the M.V. Act. The said I.A. was allowed on 10.08.2017 by the Tribunal. Admittedly, neither the appellant - Insurer, nor respondent No.6 – owner of the offending vehicle challenged the said order dated 10.08.2017, and thereby it has attained finality. Therefore, the Tribunal adjudicated the claim under Section 163A of M.V. Act, in which event, the claimants need not prove the negligence on the part of the driver of the offending vehicle. The Tribunal has rightly held that the claimants need not prove the negligence of the offending vehicle in a claim under Section 163A of the M.V. Act.

21. In view of the above discussion, the Insurer and the owner are liable to pay the compensation.

22. The learned counsel for the appellant - Insurer would contend that the cheque issued by the owner was dishonoured and the

policy was cancelled. The cancellation of policy was informed to the owner of the offending vehicle by addressing a letter and the same was served on the owner. Admittedly, respondent No.6, owner of the offending vehicle, has issued cheque bearing No.408119, dated 28.02.2014 of State Bank of India, Balkampet Branch, Hyderabad, for Rs.42,335/- in favour of the appellant - Insurer towards payment of premium. The said cheque was marked as Ex.B2. Pursuant to the same, on the same day, the appellant - Insurer has issued cover-note under Ex.B1. The appellant presented the said cheque with its banker - Corporation Bank on 10.03.2014 for encashment and the said bank, in turn, sent the same to the banker of the owner for clearance. But, the said cheque was dishonoured with the reason 'insufficient funds', and to that effect the banker of the Insurer has issued a cheque return memo dated 11.03.2014.

23. According to the appellant - Insurer, on receipt of the cheque return memo, it had addressed Ex.B5 - letter dated 13.03.2014 to the owner by registered post with acknowledgment card. Ex.B5 was sent to the address furnished by the owner while issuing cover note duly marking a copy to the Regional Transport Officer, RTO Office, Rangareddy, DTC, Vasudeva Complex, Rajendra Nagar, Hyderabad, intimating about the dishonour of cheque with an advise to return the original documents, viz., cover note etc., In the said letter, the Insurer also informed the owner that in view of dishonour of cheque and non-receipt of premium amount, the cover note issued in

favour of the owner becomes void *ab initio* as per the provisions of Section 64 VB of Insurance Act, 1938 and first proviso to clause 4 of the Insurance Development and Regulatory Authority (Manner of Receipt of Premium) Regulation, 2002. In the said letter, it was further informed that the Insurer shall have no obligation to indemnify the owner for any and/or all kind of loss/es as proposed in the said cover note and that the owner shall solely be responsible for and liable to any liabilities whatsoever.

24. It is relevant to note that in Ex.B5 - letter, it is specifically mentioned that the Insurer advised the owner to pay the premium in cash/by demand draft/by pay order to them along with a fresh proposal form to enable them to take an underwriting decision for the risk. The said letter was received by the owner vide Ex.B6 - postal acknowledgment card, whereas Ex.B7 - postal track report discloses about the delivery of article sent to the RTO. Ex.B8 is the cancellation of policy issued in favour of the owner.

25. By referring to the above said documents, Exs.B1 to B8 and the depositions of RW.1 and RW.2, the learned counsel for the Insurer would contend that the accident had occurred on 04.05.2014 on account of negligence of the driver of the offending vehicle. The cheque issued by respondent No.6, owner of the offending vehicle, towards payment of premium in respect of the offending vehicle, was dishonoured. In view of the same, the policy was cancelled and the same was intimated to the owner as well as RTO in writing. Both of

them have knowledge about the dishonour of cheque as well as cancellation of policy in view of receipt of Ex.B5 - letter. Even then, the owner did not come forward to pay the premium amount, as such, it is not liable to pay any compensation to the claimants. In support of his contentions, the learned counsel has placed reliance on the decisions in **National Insurance Co. Ltd. v. Seema Malhotra**[2], **Deddappa v. Branch Manager, National Insurance Co. Ltd.**[3] and **National Insurance Co. Ltd., Ongole v. Oburi (Oguri) Umamaheswara Rao**[4].

26. On perusal of the entire record, it is not in dispute that respondent No.6, owner of the offending vehicle, has issued the cheque on 28.02.2014 for Rs.42,335/- towards payment of premium in respect of the offending vehicle. Pursuant to the same, the Insurer has issued a cover note on the very same day. The Insurer deposited the said cheque with its banker on 10.03.2014 for encashment, but the same was dishonoured on 11.03.2014. The same was informed to the Insurer vide cheque return memo dated 11.03.2014. Thereafter, the Insurer has addressed Ex.B5 - letter dated 13.03.2014 to the owner by sending the same through registered post with acknowledgment due to the address furnished by the owner while issuing Ex.B1 - cover note. A copy of Ex.B5 was marked to the RTO informing about the dishonour of cheque as well as cancellation of cover note. The said letter was received by the owner vide Ex.B6, while the RTO under

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2. (2001) 3 SCC 151
3. (2008) 2 SCC 595
4. 2011 (4) ALD 254

Ex.B7. In Ex.B6 - postal acknowledgment card, there is a signature in proof of receipt of Ex.B5 - letter. It further discloses that the article was booked vide RLAD No.RM838996406IN. The learned counsel for the claimants would contend that signature on Ex.B6 does not belong to respondent No.6 and, therefore, he has not received Ex.B5 - letter. But, the said contention cannot be accepted in view of Exs.B1, B5 and B6. Admittedly, Ex.B5 was sent to the address furnished by the owner under Ex.B1.

27. It is relevant to note that respondent No.6, owner of the offending vehicle, did not adduce any evidence before the Tribunal. The claimants have also not chosen to take any steps to examine the owner. The claimants failed to elicit anything from RW.1 and RW.2 during cross-examination to show that Ex.B5 - letter was not served on the owner. It is apt to note that even the Insurer did not take any steps to examine the owner of the vehicle. Thus, in view of the specific evidence, more particularly, Exs.B5 to B7, it can safely be held that Ex.B5 - letter got served on the owner vide Ex.B6. Therefore, the finding of the Tribunal that Ex.B5 letter was not served on the owner is erroneous and contrary to the record. As far as service of notice on the RTO is concerned, Ex.B5 letter discloses that it was marked to the RTO, Ranga Reddy, Vasudeva Complex, Hyderguda, Hyderabad. The Insurer has sent the said letter by post vide RM838996410IN as per Ex.B7. In proof of receipt of the said letter by RTO, the Insurer filed Ex.B7 - postal track and it discloses

that the article (Ex.B5) was delivered on 24.03.2014 at Hyderguda. In view of the same, now the claimants cannot say that Ex.B5 letter was not served on RTO. The Tribunal observing that though Ex.B7 is filed to show that the notice marked in Ex.B5 was sent to respondent No.2, owner of the vehicle, which is marked in Ex.B7, the same does not disclose that a letter/article was delivered on 24.03.2014 by 14:48:12 at Hyderguda. It is relating to article with registration number "RM838996410IN and that the postal acknowledgment card marked in Ex.B6 contains RLAD number as "RM838996406IN. Thus, the Tribunal gave a finding that Ex.B7 is not relating to the article said to be sent to respondent No.2, much less under the postal acknowledgment card marked in Ex.B6. The Tribunal further held that no proof is produced that similar notice was issued to the Regional Transport Authority though it is stated in the counter as well as in the evidence of RW.1 that the policy of insurance proposed to be given to the crime vehicle of respondent No.2 therein by giving insurance cover note, stood cancelled.

28. As discussed supra, Ex.B5 - letter was sent to respondent No.6, owner of the crime vehicle to the address furnished by him in Ex.B1 - cover note. Further, in proof of sending the said letter to the owner of the crime vehicle by the Insurer under registered post with acknowledgment due, the Insurer filed Ex.B6 - acknowledgment card which bears the signature as well as RLAD number as RM8338996406IN. Ex.B5 - letter sent to the Regional Transport

Authority was under RLAD number as RM8338996410IN as per Ex.B7 - postal track report. So, the RLAD numbers under Ex.B6 and B7 are different as RLAD number "RM8338996406IN" pertains to the owner, while RLAD number "RM8338996410IN" pertains to the RTO. In view of the same, the above finding of the Tribunal that Ex.B7 is not relating to the article said to be sent to respondent No.2 - owner, much less under postal acknowledgment card marked as Ex.B6 is incorrect and contrary to the record. The Tribunal got confused in referring the said numbers. Thus, the further finding of the Tribunal that Ex.B6 is the postal acknowledgment card which bears the signature of someone, but not respondent No.2 as admitted by RW.1, and that though it is for RW.1 that somebody on behalf of respondent No.2 must have signed on the postal acknowledgment card, it is not explained as to who is that signatory and in what was the said signatory is related to respondent No.2 is erroneous and contrary to record. The further finding of the Tribunal that Ex.B5 - letter was not served on the owner as well as on the RTO is also incorrect and contrary to the record.

29. As discussed supra, it is obligatory on the part of the Insurer to send Ex.B5 - letter to the owner on the address furnished by him in Ex.B1 - cover note. Admittedly, the Insurer has sent Ex.B5 to the said address as is evident from Ex.B6 - postal acknowledgment card. It was delivered at the said address. It bears the signature of the receiver. By filing Exs.B1, B5 and B6, the Insurer has discharged its

burden. It is for the claimants and owner of the vehicle to enter the witness box and plead that owner has not received Ex.B5, address mentioned in Ex.B6 does not belong to the owner and the signature does not belong to the person related or concerned to the owner. No effort of whatsoever was made either by the claimants or by the owner to prove the same. Therefore, the Insurer has proved that Ex.B5 was served on the owner and the RTO by producing legally acceptable and convincing evidence.

30. The learned counsel for the appellant - Insurer would further contend that in Ex.B1 - proposal form-cum-cover note, it is mentioned that policy would automatically stand cancelled in the event of dishonour of cheque. On perusal of Ex.B1 - cover note, it is specifically mentioned that "in the event of dishonor of Cheque(s) insurance cover provided under the document automatically stands cancelled from inception irrespective of whether a separate communication is sent or not". Therefore, the finding of the Tribunal that it finds no such Clause in Ex.B1, proposal form-cum-cover note, is contrary to record and erroneous.

31. From the above discussion, it is clear that the cheque issued under Ex.B2 was dishonoured and consequently Ex.B1, cover-note was cancelled by the Insurer. The Insurer also intimated about the dishonour of cheque as well as cancellation of policy to the owner as well as RTO by addressing a letter under Ex.B5 and the said letter was received by the owner under Ex.B6 while Ex.B7 discloses receipt of

Ex.B5 letter by the RTO. Thus, there is no valid policy exists as on the date of accident i.e., 04.05.2014. Section 64-VB of the Insurance Act also says that no risk to be assumed unless premium is received in advance. In the present case, the Insurer has not received the premium and, therefore, the Insurer shall not assume any risk. As such, the Insurer is not liable to pay compensation to the claimants - legal heirs of the deceased.

32. The learned counsel for the appellant - Insurer placed reliance on the decision in **Seema Malhotra**[2], wherein the Hon'ble Apex Court held that where premium remains unpaid because cheque of insured is returned dishonoured, contract of insurance is void and, therefore, even if insurer had disbursed the insured amount before the dishonouring of the cheque, he is entitled to reimbursement. In another decision relied on by him in **Deddappa**[3], the Hon'ble Apex Court held that Insurance Company is not liable for rescinding insurance contract on account of non-payment of premium due to dishonour of cheque. It was further held that a contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedents for a valid contract. A contract furthermore must be for consideration. The Hon'ble Apex Court further held in the said judgment that it is not oblivious of the distinction between the statutory liability of the insurance company *vis-à-vis* a third party in the context of Sections 147 and 149 of the M.V. Act and its liabilities in other cases. But, the same liabilities arising under a contract of

insurance would have to be met if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, it is of the opinion that the insurance company would not be liable to satisfy the claim. In **Oburi (Oguri) Umamaheswara Rao**[4], the accident had taken place ten months after cancellation of cover note and a learned Single Judge of the High Court of Andhra Pradesh at Hyderabad held that non-receipt of information conveyed by the Insurer about dishonour of cheque and consequent cancellation of cover note is no ground to make the Insurer liable to pay compensation. The facts in the said decisions are akin to the case on hand.

33. The learned counsel for the claimants and the learned counsel for respondent No.6 - owner would contend that as per the evidence of RW.2, Manager of SBI, the banker of respondent No.6 - owner, an amount of Rs.44,216/- was available in the account of the owner by 07.03.2014. According to them, though the cheque was issued on 28.02.2014, the appellant did not present the said cheque by the said date and, therefore, respondent No.6, owner of the crime vehicle cannot be blamed for the said delay on the part of the Insurer. But, as per the provisions of the N.I. Act, cheque, a negotiable instrument is valid for three (03) months. Therefore, it is for the Insurer to present the said cheque within the period of three months. It is the duty of respondent No.6 - owner to keep sufficient funds in his account till the said period expires or till the cheque is honoured. In the case on hand, despite issuing Ex.B2 - cheque on 28.02.2014,

without verifying that the cheque was cleared/dishonoured, respondent No.6, owner of the crime vehicle, withdrew the amount or did not keep the required funds in his account so as to honour the cheque. Thus, there is negligence on the part of the owner in which event he cannot blame the Insurer.

34. In view of the above discussion, the contention of the claimants and the owner that there was delay on the part of the Insurer in depositing the cheque and as such, the Insurer is liable to pay compensation cannot be accepted. In support of the contention, the learned counsel for respondent No.6 - owner has relied upon a decision of the Hon'ble Supreme Court in **United India Insurance Company Limited v. Laxmamma**[5]. In the said decision, the Insurer had cancelled the policy after the incident took place, whereas in the case on hand, much before the accident itself, the policy was cancelled. In the said decision, it was further held by the Hon'ble Apex Court as under:

> "In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy 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 authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of

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[5]. (2012) 5 SCC 234

> insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored 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."

35. As discussed supra, in the present case, the appellant - Insurer has issued Ex.B5 - letter to the owner of the crime vehicle and also to the RTO intimating about the dishonour of cheque and cancellation of policy. The same was served on the owner vide Ex.B6 - postal acknowledgment card and on the RTO vide Ex.B7 - postal tracing report. Thus, the facts in the said decision and the facts in the case on hand are totally different and the same is not helpful to respondent No.6 herein. They have also relied on an unreported judgment of High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh in **The New India Assurance Company Limited v. Banoth Shantha**[6]. In the said case, the accident had taken place on 04.11.2005, whereas notices about dishonour of cheque were sent on 21.03.2006 to the owner and the RTO i.e., after four and half months. But, the facts in the case on hand are different as the Insurer has sent the notices much before the accident. Thus, the principle held in the said judgment is not applicable to the case on hand.

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[6]. Judgment, dated 26.09.2016 in MACMA Nos.276 of 2009 and 762 of 2016

36. The learned counsel for the claimants and the owner also relied upon another decision in **National Insurance Co. Ltd. v. Smt. Sk. Ahmedunnisa**[7], wherein the High Court of Andhra Pradesh at Hyderabad held that when Insurer failed to prove that notices were served on insured about cancellation of policy, Insurer cannot avoid its liability. But, in the case on hand, as discussed supra, the Insurer has proved about service of notices on the owner as well as RTO under Exs.B5 and B6. Thus, the said decision is not at all applicable to the facts of the present case. For the very same principle, they have also relied on another decision in **National Insurance Co. Ltd., Medak District v. Md. Khaleeq Pasha**[8] rendered by the High Court for the State of Telangana, but the same is of no assistance to the claimants as well as the owner in view of the specific finding given in the above that the Insurer has served Ex.B5 on the owner and the RTO much before the accident.

37. As already discussed above, the accident is not in dispute. The claim was under Section 163A of the M.V. Act. The policy was cancelled as on the date of accident i.e., 04.05.2014. The policy was not in force as on the date of accident. Therefore, the appellant - Insurer is not liable to pay compensation to the claimants. It is respondent No.6, owner of the vehicle who is liable to pay compensation to the claimants. Thus, the finding of the Tribunal that

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[7]. AIR 2008 A.P. 278
[8]. 2019 (6) ALD 22 (TS)

the appellant - Insurer has to pay the compensation at the first place and recover the same from the owner is unsustainable.

38. Now, coming to the quantum of compensation, it is the specific contention of the claimants that the deceased was 32 years as on the date of accident. However, they have not filed any document to prove the age of the deceased as 32 years as on the date of accident. However, in Ex.A3 - post-mortem examination report, the age of the deceased is mentioned as 32 years. Thus, in the absence of any documentary evidence, the Tribunal has taken the age of the deceased as 32 years. There is no error committed by the Tribunal in taking the age of the deceased as 32 years.

39. With regard to the monthly earning capacity of the deceased, it is the contention of the claimants that the deceased used to do real-estate business and used to earn an amount of Rs.40,000/- per annum. However, the Tribunal observing that as suggested to PW.1 by the Insurer that the deceased was earning only Rs.4,000/- per month, which comes to Rs.48,000/- per annum. Even, the said amount of Rs.4,000/- per month is taken as the monthly earning capacity of the deceased, annual income of the deceased would be Rs.48,000/-. But, as per the Second Schedule appended to Section 163A of M.V. Act, maximum income shall be considered as Rs.40,000/-. Accordingly, the Tribunal considered the said amount of Rs.40,000/- per annum. The relevant multiplier for the age group of above 30-35 years, as per the Second Schedule, is ’17’. Accordingly,

the compensation would be Rs.6,40,000/-. The Tribunal held that after deducting 1/4th thereof, towards personal expenses of the deceased, the claimants are entitled to Rs.4,80,000/- under the head of loss of dependency. The Tribunal has also awarded an amount of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and an amount of Rs.40,000/- to claimant No.1 towards loss of consortium, making a total of Rs.5,50,000/-. In fact, the Tribunal erred in deducting 1/4th instead of 1/3rd as per the Second Schedule to Section 163A of the M.V. Act towards personal expenses of the deceased, and thus, the said finding is erroneous. When 1/3rd is deducted it would come to Rs.4,53,334/- (Rs.6,40,000/- minus Rs.2,26,666/- towards 1/3rd) and accordingly, the same is reduced to Rs.4,53,334/- as against the amount of Rs.4,80,000/- awarded by the Tribunal.

40. The Tribunal by relying upon the decision of the Hon'ble Apex Court in **National Insurance Company Limited v. Pranay Sethi**[9] has also awarded Rs.15,000/-, Rs.15,000/- and Rs.40,000/- towards loss of estate, funeral expenses and loss of consortium respectively under non-pecuniary damages. It is relevant to note that the Tribunal dealt with the claim under Section 163A of the M.V. Act. As per the second schedule appended to Section 163A of the M.V. Act, in case of death, only Rs.2,500/-, Rs.2,000 and Rs.5,000/- are to be awarded under the heads of loss of estate, funeral expenses and loss of consortium respectively. The above decision in **Pranay Sethi**[9]

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[9]. 2017 ACJ 2700

is not applicable when the claim under Section 163A of the M.V. Act is dealt with. More over, in **Pranay Sethi**[9], it is a fatal accident. Therefore, the finding of the Tribunal in applying the said principle in the said decision is erroneous. Thus, the said amounts of Rs.15,000/-, Rs.15,000/- and Rs.40,000/- are reduced to Rs.2,500/-, Rs.2,000/- and Rs.5,000/- making a total of Rs.9,500/-. Thus, in all, the claimants are entitled to Rs.4,62,834/- as against the amount of Rs.5,50,000/- awarded by the Tribunal. The Tribunal has awarded the rate of interest at 7.5% per annum. Since this Court considering various aspects including cost of living and date of accident etc., has been granting the said rate of interest consistently, the same is maintained.

41. Thus, as discussed above, this appeal is allowed with the following findings:

i) If a cheque issued by owner of the vehicle towards premium to the Insurer is dishonoured, the Insurer has to cancel the policy and intimate about the dishonour of cheque and cancellation of the policy to the owner of the vehicle and the Transport Authority concerned by duly serving a copy of the intimation about the dishonour of cheque and cancellation of policy on the owner and the Transport Authority concerned before the date of accident. Then only the Insurer is not liable to pay compensation to the injured/legal heirs of the deceased.

ii) If the Insurer fails to serve the intimation about the dishonour of cheque and cancellation of policy on the owner before

the accident, it is liable to pay compensation to the injured/legal heirs of the deceased.

iii) A contract must be for consideration. Contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedent for a valid contract. If a contract of Insurance has been cancelled and all the concerned have been intimated thereabout, the Insurer is not liable to satisfy the claim.

42. Accordingly, the award and decree dated 06.09.2018 in M.V.O.P. No.2 of 2015 passed by the Tribunal are modified reducing the compensation from Rs.5,50,000/- (Rupees five lakhs and fifty thousand only) to Rs.4,62,834/- (Rupees four lakhs sixty two thousand eight hundred and thirty four only). However, the interest shall carry, on the entire amount, @ 7.5% per annum. Similarly, the finding recorded by the Tribunal that the Insurer is directed to deposit the compensation at the first place and recover the same from the owner of the vehicle, is hereby set aside. Accordingly, the appellant - Insurer is not liable to pay compensation to the claimants. Respondent No.6 herein, owner of the crime vehicle is directed to deposit the said compensation amount with interest and proportionate costs within one (01) month from the date of receipt of a copy of this judgment. After deposit, the claimants are entitled their shares in accordance with the ratio fixed by the Tribunal in the award and decree. In the circumstances of the case, there shall be no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending in the appeal stand closed.

K. LAKSHMAN, J

06th July, 2020
Mgr

Note: L.R. Copy to be marked: **YES**