HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.723 OF 2009

JUDGMENT:

This appeal is filed by the claimants challenging the judgment and award dated 06.9.2007 passed in M.V.O.P. No.285 of 2005 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge, Guntur.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The petitioners filed the petition under Section 166 of the Motor Vehicles Act, 1988 claiming a compensation of Rs.10,00,000/- for the death of their father, Y.S.Rajamannar (hereinafter referred to as, the deceased), in a road accident that occurred on 22.5.2003. The case of the petitioners is that on 19.5.2003, the petitioners and their parents went to Basara, Hyderabad and therefrom to Kurnool in a Maruti Car bearing No.AP 7N 7868. On 22.5.2003, they started at Kurnool to go to Bengaluru. When they reached Polytechnic College, Bagepalli, Kolar District, Maruti Car turned turtle due to which, father and mother of the petitioners died on the spot. At the time of accident, father of the petitioner-the deceased drove Maruti Car. The Station House Officer, Bagepalli Police Station registered a case in Crime No.62 of 2003. By the time of death, the deceased was aged about 45 years and was earning Rs.75,000/- per annum as Administrator in St. Laurens English Medium School. The first petitioner is son and the second petitioner is daughter of the deceased. Hence, the present petition.

4. The first respondent–National Insurance Company Limited filed written statement *inter alia* contending that the accident occurred due to rash and negligent driving of the Maruti Car by the deceased, who is the insured. The petitioners are not dependents on the income of the deceased. The amount of compensation claimed by the petitioners,

under various heads, is excessive and exorbitant. Since the accident occurred due to the negligence of insured himself, the question of indemnifying the liability of insured does not arise. Hence the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1) Whether the accident took place due to rash and negligent driving of the driver of the Maruthi Car No.AP 7N 7868?
2) Whether the petitioners are entitled for the compensation, if so, what amount and from which of the respondents?
3) To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked. On behalf of the first respondent, R.W.1 was examined and Exs.B1 to B4 were marked. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident was occurred due to rash and negligent driving of the Maruti Car bearing No.AP 7N 7868 by the deceased himself and dismissed the petition. Being not satisfied with the judgment and award of the Tribunal, claimants preferred the present appeal.

7. Sri M.Koteswara Rao, learned counsel for the appellants-claimants strenuously submitted that the finding of the Tribunal that the petitioners are not entitled to claim compensation is not legally sustainable. He further submitted that mere receiving of amounts under Exs.B3 and B4 by itself is not a sufficient ground to dismiss the petition. *Per contra*, Smt.M.Bhaskara Lakshmi, learned Senior Counsel appearing on behalf of the first respondent-Insurance company submitted that the petition is not maintainable under law. She further submitted that the Tribunal has rightly considered the recitals of Exs.B1 to B4 and dismissed the petition.

8. Now the point that arises for consideration, in this appeal, is

whether the Tribunal is justified in dismissing the petition.

9. Basing on the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the Maruti Car by the deceased. Neither the appellants-petitioners nor the learned counsel for the first respondent-Insurance company disputed the finding of the Tribunal on Issue No.1. Therefore, the finding recorded by the Tribunal on the issue became final so far as the manner of accident and death of deceased are concerned.

10. The crucial question that falls for consideration is whether the finding of the Tribunal that the present petition is not maintainable is legally sustainable or not. Learned counsel for the appellants-petitioners strenuously submitted that the finding recorded by the Tribunal is not sustainable as there is no bar to file a petition under Section 166 of the M.V.Act by the legal representatives of the deceased. I am fully agreeing with the submission made by the learned counsel for the appellants that the legal representatives of the deceased are entitled to file the petition claiming compensation provided that there was no negligence on the part of the deceased. It is not in dispute that at the time of accident, the crime vehicle was driven by the deceased himself. A perusal of Ex.B1 reveals that the deceased paid extra premium covering the risk of owner of vehicle as well as the damages to the vehicle.

11. In order to resolve the issue involved, in this appeal, this court is placing reliance on the decision in **Dhanraj v New India Assurance Co. Ltd.**[1]. In para Nos.8, 9 and 10 therein, it was held as follows:

> 8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner

of the vehicle.

9. In the case of ***Oriental Insurance Co. Ltd.*** v. ***Sunita Rathi and Ors.*** MANU/SC/0840/1998: AIR 1997 SC 4228 it has been held that the liability of an Insurance Company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the Insurance Company has no liability also.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4,989/- paid under the heading "Own damage" is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance.

12. In **Oriental Insurance Co. Ltd v Smt.Jhuma Saha**[2], at para Nos.6 and 7, it was held as follows:

6. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident The accident did not involve motor vehicle other than the one which lie was driving, the question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable. Liability of the insurer-Company is to the extent of indemnification of the insured against the respondent or a injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicle Act, the question of the insurer being liable to indemnify insured, therefore, does not arise.

7. In Dhanraj v. New India Assurance Co. Ltd. and Anr. MANU/SC/0823/2004 : (2004) 8 SCC 553, it is stated as follows:

8. thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

10. In this case, it has not been shown that the policy covered

> any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4989 paid under the heading "Own damage" is for covering liability towards personal injury. Under the heading" Own damage", the words 'premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance.

13. The facts of the case on hand are similar to the facts of the cases cited supra. As per the principle enunciated in the cases cited supra, if the accident occurred due to rash and negligent driving of the owner of the vehicle, the Insurance company is not liable to pay compensation.

14. Learned counsel for the first respondent submitted that the petitioners are not entitled to file the petition having received the amounts under Exs.B2 to B4. The oral testimony of R.W.1 coupled with Ex.B2 clearly reveals that the deceased paid Rs.100/- towards compulsory Personal Accident Cover Premium, Rs.150/- towards Personal Accident claim covering the risk of 3 inmates of car, Rs.25/- towards premium covering the risk of the paid driver. The testimony of R.W.1 further reveals that immediately after the accident, the petitioners have approached the first respondent-Insurance company and settled the matter. The first respondent paid an amount of Rs.75,500/- towards damage of the Maruti Car and Rs.3,00,000/- towards the death of deceased and his wife. The oral testimony of R.W.1 coupled with Ex.B2 disbursement voucher and Exs.B3 and B4 receipts clearly reveals that the petitioners received an amount of Rs.3,75,500/- as per the terms and conditions of Ex.B1 policy. It is not out of place to extract hereunder relevant portion in Ex.B4:

> "*I/We agree that this payment absolves the Company from all further liability whether now or hereafter become manifest in respect of this accident under their Personal Accident Policy*"

15. A perusal of the above extracted portion of Ex.B4 clearly reveals that the petitioners received the amount of Rs.3,00,000/- for the death of their parents. The petitioners accepted the amount under Ex.B4

receipt towards full and final settlement of the claim for the death of their parents. It is not the case of the petitioners that they have not received the amounts under Exs.B3 and B4. A careful perusal of Exs.B2 to B4 reveals that the petitioners, by receiving the amounts, have given up their right to file petition under Section 166 of the M.V. Act. The Tribunal considered the oral and documentary material in right perspective and arrived at a conclusion that the petition is not maintainable. I am fully agreeing with the findings recorded by the Tribunal. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal. Viewed from factual or legal aspects, this appeal is not maintainable.

16. In the result, the appeal is dismissed without costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 28.1.2015
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[1] 2005 (1) ALT 6 (SC) = (2004) 8 SCC 553

[2] AIR 2007 SC 1054 = (2007) 9 SCC 263