IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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M.A.C.M.A. No.1150 of 2009

Between:
The New India Assurance Company Ltd.
Karimnagar Branch,
Rep. by its Branch Manager. …. Appellant

And

Meharunnisa @ Meharunnisa Begum
and others …

Respondents

DATE OF JUDGMENT PRONOUNCED**: 27.07.2015**

SUBMITTED FOR APPROVAL**:**

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to see the fair copy of the Judgment? Yes / No

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. No.1150 of 2009

JUDGMENT:

Challenging the Award dated 04.05.2007 in O.P.No.155 of 2006 passed by the Chairman, M.A.C.T-cum-II Additional District Judge, Karimnagar (for short 'Tribunal'), the 3rd respondent in OP/ New India Assurance Company Limited, preferred the instant MACMA.

2 a) On factual side, on 12.11.2005 at about 4.30 PM, the deceased—Mohd. Siddiq @ Mohd. Abubaker on the instruction of his brother while proceeding on the Harvester bearing No.AP 15 R 4885 of his brother to the fields at Dhulur village and when it reached near Dhulur field, R1—driver of Harvester drove the same in a rash and negligent manner and at high speed without observing electric wires, due to which, the deceased came in contact with the electric live wires and was shocked. Immediately he was shifted to hospital, but on the way he lost his breath. On these pleas, the claimants filed OP No.155 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "MV Act") against respondents 1 to 3, who are the driver, owner and insurer of the harvesting machine and claimed Rs.12,00,000/- as compensation.

b) Respondent No.1 remained *ex parte*.

c) R2/owner filed counter admitting the allegations made in the petition and contended that due to the negligence of driver of the Harvester only the accident was occurred. As the vehicle was insured with R3—Insurance Company, he contended, compensation has to be awarded against it.

d) Respondent No.3/Insurance Company filed counter denying all the material averments and urged to put the claimants in strict proof of the same. R2 contended that due to negligence of the deceased only the accident was occurred since he travelled in the Harvester and come in contact with the electric live wires and hence AP TRANCO is a necessary party. R3 further contended that vehicle was not insured with it and R1 had no valid and effective driving licence at the time of accident. R3 denied its liability also on the counter plea that Harvester was not meant for carrying passengers and policy will not cover the risk of deceased.

e) During trial, PWs.1 and 2 were examined and Exs.A.1 to 9 were marked on behalf of the claimants. RW1 was examined and Exs.B1 and B2 were marked on behalf of respondents.

f) The Tribunal on appreciation of oral and documentary evidence, awarded a total sum of Rs.9,26,700/- with proportionate costs and interest @ 7.5% p.a. against respondents 1 to 3.

Hence, the appeal by the Insurance Company.

3) The parties in the appeal are referred as they stood

before the Tribunal.

4) Heard arguments of Sri B.Naresh, learned Counsel for appellant/Insurance Company, Sri K.Vasudeva Reddy, learned counsel for respondents Nos.1 to 4/claimants. Notice sent to R5 and R6 was served but no representation on their behalf.

5 a) Though admitting the policy, learned counsel for appellant

Sri B.Naresh, sought to repudiate the liability of Insurance Company on the main plank of argument that Harvester machine had the seating capacity for only one person i.e. driver and except him none other is permitted to travel on it and if he does so and got involved in the accident, his risk will not be covered under the terms of the policy. Since the deceased travelled as an unauthorized passenger on the Harvesting machine and got electrocuted, Insurance Company will not attain any liability to shell out compensation. Referring Ex.B1—policy, learned counsel though admitted that premium of Rs.50/- was paid to give coverage to two employees i.e. driver and another employee, he strenuously argued that the deceased would not fit into the slot of employee because of the admitted facts in the case that the deceased was none other than younger brother of R2 in OP who is the owner of the Harvester in question. Therefore, the evidence of R2 (RW1) that he instructed the deceased to proceed on the Harvester to the fields to supervise its functioning will not give the status of an employee of R2 to the deceased since they are own brothers. Learned counsel relied upon the decision of the Apex Court reported in ***Gottumukkala Appala Narasimha Raju v. National Insurance Company Limited***[1] and contended that in similar circumstances the Honourable Apex Court held that the plea of the wife who was the owner of the tractor that her husband who drove the tractor and died in the accident was employed by her cannot be believed. Learned counsel thus argued that the Tribunal erred in holding that deceased should be treated as a temporary employee of R2 at the relevant time of accident. He thus prayed to exonerate the Insurance Company.

b) Nextly, criticizing the quantum of compensation, learned counsel argued that the claimants could only establish that deceased was a heavy vehicle driver and frequenting between India and Saudi Arabia. However, though they claimed that he was working as driver in Saudi Arabia and earning Rs.12,000/- (1500 Saudi Riyals) per month, they did not produce any cogent evidence in this regard, but still the Tribunal, purely on assumption, took his salary as Rs.8,000/- per month and computed compensation and thereby compensation was unduly escalated. Learned counsel argued, basing on the driving licence even if it is accepted that deceased was a heavy vehicle driver, his monthly earnings during the relevant period will not be more than Rs.4,000/- as per relevant G.O. issued under Minimum Wages Act. Therefore, the Tribunal committed a grave error in accepting his earnings at Rs.8,000/- per month.

c) Thus, learned counsel at the first instance sought for exoneration of Insurance Company from liability and alternatively argued for re-assessment of compensation.

6) In oppugnation, learned counsel for respondents/claimants argued that admittedly policy covers the risk of two employees and since R2 admitted that he instructed the deceased to proceed on the Harvester to supervise its functioning because the deceased was a heavy vehicle driver, the Tribunal rightly held the deceased as a temporary employee and extended the policy to him and fixed liability on the Insurance Company and absolutely there is no wrong on the part of Tribunal. He further submitted that compensation awarded by the Tribunal under different heads was just and reasonable and there is no need to revise the same. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination in this appeal is:

"Whether the award passed by the Tribunal is factually and legally sustainable?"

8 a) **POINT**: Accident, involvement of Harvester bearing No. AP 15 R 4885 and death of deceased are admitted facts. It is a further admitted fact that deceased was the own brother of R2. It is also an admitted fact that Ex.B1—policy was in force by the date of accident and apart from basic premium for third parties, an additional premium of Rs.50/- was paid to give coverage to two employees. One employee is obviously the

driver of Harvester i.e. R1. Hence, now the crucial question is whether the deceased who travelled on the Harvester would fit into the slot of second employee. The contention of appellant is that since the deceased and R2 are own brothers, it is highly unbelievable that R2 engaged deceased as his employee as held by the Tribunal. At this juncture, it is pertinent to peruse the evidence of RW1.

b) RW.1 deposed that deceased was his younger brother and as he was suffering from fever, he requested his brother to go on the Harvester and to attend the work on the date of accident. So this is the evidence of RW1 revealing the purpose for which the deceased was asked to travel on the Harvester. The contention of learned counsel for appellant is that since the seating capacity of Harvester is only for one i.e. driver, the deceased would not have travelled on it even assuming that he was instructed by his brother and therefore, in any event the policy will not cover his risk. This argument cannot lie in the mouth of Ex.B1—policy, since the Insurance Company collected premium for two employees i.e. for driver and another employee. Having collected for two employees the Insurance Company is now estopped from contending that no other employee except the driver shall travel on the Harvester. So what is remained for consideration is, whether the deceased could be accepted as temporary employee of R2 as on the date of accident. It is his categorical evidence that since he was suffering from fever, RW1 instructed the deceased to proceed to the fields to attend the work. So according to him, he sent his brother to supervise the Harvester’s functioning at the fields and the accident was also occurred in agricultural fields at Dhulur. Not only that in Ex.A2—inquest report which was prepared within short time after the accident, the deceased was referred as Supervisor of the Harvester. So, it is obvious that deceased proceeded on the Harvester not on his own accord but on the instructions of his brother. Therefore, Tribunal was right in accepting the deceased as under temporary employment of RW1 at the time of accident. Since the policy covers the risk of two employees, the risk of the deceased shall be deemed covered under it.

c) In this regard, the cited decision in ***Gottumukkala Appala Narasimha Raju***’s case (1 supra) can be distinguished on facts. In that case, the wife who is the owner of the tractor took a plea that there were disputes between her and her husband and they were living separately but she engaged her husband as her tractor driver who met with an accident and died. Disbelieving her version the Honourable Apex Court held herself and claimants colluded together and made concocted story. However, the circumstances are different in the case on hand. Admittedly, the deceased and R2 were brothers. R2 did not proceed on Harvester at the time of accident and only the deceased proceeded. The evidence of RW1 as stated supra is that he was suffering from fever and hence he instructed his deceased brother to proceed on the Harvester and the deceased was referred as Supervisor of Harvester in the relevant crime records. So, there is nothing to disbelieve the version of RW1. Hence, the contention of Insurance Company cannot be accepted.

9 a) Then quantum of compensation is concerned, according to claimants, deceased was working as a driver of heavy motor vehicle at Saudi Arabia and he came to Korutla, India on 27.09.2005 on a temporary vacation with return air ticket. According to them, deceased was earning Rs.12,000/- (1500 Saudi Riyals) per month. In proof of their pleas, they produced Exs.A7 to A9. Ex.A7 is the driving licence said to be issued at Saudi Arabia, Ex.A8 is the passport-cum-visa and Ex.A9 is his return air ticket. Except these documents the claimants have not produced the particulars of his employment and salary in Saudi Arabia. In view of it, what can be held is that deceased had driving licence and probably he was working in Saudi Arabia. We do not have the particulars of his employment. In this backdrop, what he can earn as driver in India can only be taken into consideration. Since he was a young man and a driver, he would have earned atleast Rs.5,000/- per month in India. By adding 50% towards future prospects, his monthly earnings can be fixed at Rs.7,500/- (Rs.5,000/- plus Rs.2,500/-). The Tribunal selected multiplier '14.01' considering his age as 37 years and there is nothing to find fault with it. Thus, the compensation for loss of dependency comes to Rs.8,40,600/- (Rs.7,500/- x 12 x 2/3rd x 14.01).

b) The compensation of Rs.30,000/- under other heads can be said to be reasonable. Therefore, the total compensation payable to the claimants can be stated as below:

Loss of dependency	Rs. 8,40,600-00
Non-pecuniary damages	Rs. 30,000-00

	Rs. 8,70,600-00

So, in the ultimate analysis, compensation is reduced by **Rs.56,100/-** (Rs.9,26,700/- minus Rs.8,70,600/-)

10) In the result, this MACMA is partly allowed and ordered as follows:

a) Compensation is reduced by **Rs.56,100/-** with proportionate costs and interest at 7.5% per annum from the date of O.P till the date of realization.

b) Respondents are directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them.

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

U. DURGA PRASAD RAO, J

Date: 27.07.2015

Murthy

[1] (2007) 13 SCC 446 = II (2007) ACC 880