

HON'BLE SRI JUSTICE S.V. BHATT

M.A.C.M.A. No.2634 OF 2005

JUDGMENT:

The 2nd respondent- insurance company in O.P.No.475 of 2001 in the Court of the Motor Accidents Claims Tribunal -cum- IV Additional District Judge (F.T.C.), Anantapur, is the appellant.

The appellant challenged the order impugned in the appeal on the grounds *inter alia* that the deceased was travelling in a goods vehicle as gratuitous passenger and the owner/deriver violated the terms and conditions of the policy, as such, the Tribunal committed error in fastening the liability on the appellant.

The facts relevant for disposal of the appeal are as follows:

The claimants are husband and children of the deceased. The deceased was working as a coolie and was earning Rs.50/- per day. On 25.02.2001, the deceased and 36 others went to garden land to pluck oranges. After harvesting and loading the oranges in the lorry, the deceased and along with others sat in the cabin of the lorry and while the lorry proceeding towards Narpala at about 6.00 p.m., due to the rash and negligent driving of the driver of the lorry, the lorry turned turtle. As a result, the deceased died. The claimants claimed compensation of Rs.1,50,000/-.

Appellant insurance company filed counter denying the allegation that the deceased and others went to coolly work in the garden. Further, the owner/driver of the lorry has violated the terms and conditions of the policy. Therefore, the appellant is not liable to pay the compensation.

Having regard to the facts and circumstances of the case and the material available on record, the Tribunal has determined the compensation of Rs.1,32,000/-. The Tribunal has fixed the income of the deceased at Rs.30/- per day i.e. Rs.900/- per month and deducted 1/3rd towards his personal expenses and applied multiplier 14.81 by taking the age of the deceased as 36 years and awarded Rs.1,06,632/- towards loss of dependency. The Tribunal awarded Rs.15,000/- towards consortium

to the 1st respondent and Rs.10,-000/- towards love and affection to respondents 2 and 3.

The learned counsel for the appellant/insurance company vehemently contends that the Tribunal failed to consider the categorical objections taken by the insurance company, firstly that the deceased was a gratuitous passenger and secondly, the owner/driver has committed violation of terms and conditions of insurance policy. As such, no compensation ought to have been awarded against the appellant.

Learned counsel for the respondents/claimants by drawing the attention of the Court to Ex.B.1, contends that both the objections now raised are untenable and that the Tribunal has passed a well reasoned order.

On the objections of insurance company that the deceased was a gratuitous passenger and that the owner/driver of the lorry has violated the terms and conditions of the policy, the Tribunal recorded the following finding:

“.. it is well settled that if there are violations of conditions and terms of policy, it is for R2 insurance company to realize the compensation paid by it from R1 owner. That is what is laid down in the several decisions of various High Courts and Supreme Court.

No exception could be pointed out by the appellant to this finding.

I have taken note of the submissions of learned counsel appearing for the parties and perused the material available on record. I see no reason to interfere with the award impugned in the appeal and the appeal fails and is dismissed. However, in the fact situation of the case, the insurance company is at liberty to recover the amount from the owner, if it is so advised. No costs.

Miscellaneous petitions, if any, pending in the MACMA shall stand closed.

S.V.BHATT, J

Date: 03.12.2015

Stp