HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.2669 of 2012

JUDGMENT :

Impugning the award of the Tribunal dated 05.06.2012 in O.P.No.456 of 2010 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, East Godavari at Rajahmundry, the 3rd respondent-insurer maintained the appeal against the respondents. The two claimants, who are no other than the parents of the deceased, by name Veera Babu, un married, aged about 21 years, of the claim filed under Section 166 of the Motor Vehicles Act (for short, 'the Act') of Rs.5,00,000/- against driver, owner and insurer of the tractor and trailer bearing Nos.AP 05 BG 5052 and AP 05 TT 4278, since the Tribunal awarded Rs.2,85,000/- with interest at 6% p.a.

2. The contentions in the grounds of appeal and oral submissions of the insurer in nut shell are that the policy issued for agricultural purpose and the vehicle is used for commercial purpose as it was transporting the mangoes at the relevant point of time, thereby the risk is not covered by policy and permit, the insurer cannot be made liable, however, the Tribunal gravely erred in fixing liability on the insurer and indemnify and to set aside the award and to exonerate the insurer.

3. Whereas it is the contention of learned counsel for

respondent Nos.1 and 2-claimants that the award of the Tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere, hence to dismiss the appeal. Respondent Nos.3 and 4, who are the driver and owner of the vehicle, even served failed to attend.

4. Heard and perused the material on record.

5. The only issue in the appeal to answer the lis is whether the tractor is used for commercial purpose at the relevant point of time though the policy is issued for agricultural purpose. Undisputedly, including from the evidence of RWs.1 and 2 vis-à-vis Ex.B.4, the policy is a comprehensive one and from their evidence with reference to Ex.B.5, the permit is for agricultural purpose and policy also issued for agricultural purpose. In fact, RWs.1 and 2 in their cross-examination in support of the evidence of PW.1, who is the 2nd claimant, deposed that even transport of mangoes can be part of agricultural purpose as the vehicle insured by policy, subject to permit, is for the agricultural purpose and agricultural produce also can be transported. When such is the case, there is nothing to show that the vehicle is used for commercial purposes. Transporting the mangoes, there from in the vehicle cannot be said in use for commercial purpose. Thus, there is nothing to interfere with the finding of the Tribunal of the vehicle is used for agricultural purpose and that the deceased was traveling as a collie on the load of mangoes for unloading, thereby the insurer

cannot be exonerated from the liability. No doubt, it is one of the contentions in the appeal during submissions by the learned counsel for the appellant-insurer that the tractor is only with seating capacity of one and even policy covered comprehensively to cover the risk of cooli, a coolie is not entitled to travel on the trailer propelled to the tractor with no seating capacity and thereby there is a violation from which the insurer is to be exonerated. Such a contention also cannot be tenable for such violation will not exonerate the insurer from liability for policy covered the risk and that is even not a case to order pay and recovery.

6. Accordingly and in the result, the appeal is dismissed.

7. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

30th December 2015

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