HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.301 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by M/s. Royal Sundaram Alliance Insurance Company Limited (for brevity "the insurer"), aggrieved by the order and decree dated 17.10.2008, passed in M.V.O.P.No.1030 of 2007 by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Guntur District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.3,75,000/- was awarded towards compensation with interest @ 7% per annum, as against the claim made under Section 163-A of the Act, claiming compensation of Rs.4,00,000/- for the death of one Annapureddy Venkateswara Reddy in a road accident that occurred on 04.05.2007 at about 5-00 p.m., near Medikonduru village, seeking to set aside the said order and decree and to exonerate the Insurance Company from its liability, since there has been violation of the terms and conditions of the Insurance Policy.

2. The appellant – M/s. Royal Sundaram Alliance Insurance Company Limited is respondent No.2, respondent

Nos.1 to 5 herein are claim petitioners, and respondent No.6 - owner of the offending LMV bearing No.AP 07W 9633 is respondent No.1, in M.V.O.P.No.1030 of 2007. For the sake of convenience, the parties herein are referred to as they are arrayed in M.V.O.P.No.1030 of 2007 before the Tribunal.

3. The fact-situation occurring in the instant case is not in dispute between the parties, except to the extent that the deceased was travelling as a gratuitous passenger as owner of the goods, in violation of the terms and conditions of the Insurance Policy.

4. Heard Sri Kota Subba Rao, learned Standing Counsel for the appellant – insurer, and Sri G.L. Nageswara Rao, learned counsel for respondent Nos.1 to 5 – claim petitioners. None appears for respondent No.6 – owner.

5. Perused the order under challenge and evidence on record.

6. Learned Standing Counsel for the appellant – insurer would contend that though, the deceased was travelling as a gratuitous passenger, as evidenced from Ex.B-3 – Investigator's Report, the Tribunal has not taken cognizance of the same and did not appreciate the evidence on record in proper perspective and, therefore, sought to set aside the

order passed by the Tribunal fastening liability on the appellant – insurer.

7. A perusal of the discussion on issue No.1 would show that the purport of Exs.B.2 and B.3 were not properly appreciated and that is how the Tribunal went wrong in recording a finding that the deceased died in the accident, as pleaded by the petitioners, without analyzing whether the liability can be fastened on the appellant – insurer.

8. Same is the case on issue No.2 also. In para-9 of the order under challenge, though, the Tribunal referred the deceased, in the context of gratuitous passenger, referring to the decision in **National Insurance Company Limited vs. Kaushalya Devi and others**[1], but, somehow, discarded Ex.B.3, stating that no value can be attached to its contents and thereby rejected the stand taken by the 2nd respondent – insurer, and recorded a finding, holding that both the respondents are jointly and severally liable to pay compensation.

9. A perusal of the documentary evidence adduced by the claim petitioners would not give any positive indication that the deceased did hire the offending mini van for transporting

[1] 2008 ACJ 2144

the goods. On the other hand, the recitals in Ex.B.2 would clearly show that the 1st respondent – owner of the offending van has submitted the Form, mentioning against Column-(g), that four persons, who do not belong to the load, were sitting in the cabin. This particular recital was, somehow, lost sight of, when the Tribunal was discussing the purport of Exs.B.2 and B.3 and, as such, it recorded an incorrect finding that they do not help the case of the respondents, therefore, the said finding is to be set aside and accordingly, set aside.

10. As the 1st respondent – owner allowed the deceased and others to travel in the offending van by sitting in cabin, though, the goods that were loaded do not relate to the deceased, in view of violation of the terms and conditions of Insurance Policy, the present appeal is liable to be allowed.

11. Learned counsel for the appellant – insurer would submit that they have complied with the directions issued by this Court, while granting interim stay, by order dated 19.02.2009, by depositing 1/3rd of the decretal amount with interest and costs by fixing a time frame.

12. However, in the vacate petition in MACMA.MP.No.3472 of 2009 filed by the claim petitioners, seeking to vacate the said interim order, this Court, while making the said interim

order absolute, permitted the major claim petitioners to withdraw their respective proportionate amounts, while ordering that the share of the minor claim petitioner Nos.2 and 3 shall not be disturbed. Therefore, the appellant – insurer is at liberty to recover the amount already withdrawn by the claim petitioners from the 1st respondent – owner. The claim petitioners are also at liberty to recover the balance compensation amount from the 1st respondent – owner.

13. Accordingly, the Civil Miscellaneous Appeal is allowed, to the extent indicated above. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

01.09.2016.
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