HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA No. 1581 of 2005

ORDER :

The insurance company, 2nd respondent to the claim petition in O.P. No.28 of 1996 that was maintained by five claimants, who are respondent Nos.1 to 5 to the appeal, against the owner of the lorry bearing No.AP 11 T 3344, 1st respondent to the claim petition, shown as 6th respondent to the appeal and the insurance company of the claim under Section 166 of the Motor Vehicles Act for Rs.2,00,000/- for the death of Ch.Jagan Kumar, son of claimants 1 and 2 and brother of claimants 3 to 6 in the lorry accident dated 13.09.1995 maintained the claim and the owner remained exparte before the Tribunal and the insurance company contested.

2) The main contest of the insurance company is that the claimants have to establish the lorry is insured with the 2nd respondent to make liable as insurer to indemnify the owner besides driver got valid permanent licence of the vehicle got permit and else to dismiss the claim as the claim is exorbitant.

3) During the course of enquiry, there is no evidence adduced by the respondent-insurer though in the counter disputed about the claim and liability. On behalf of the claimants P.Ws 1 and 2 examined and Exs.A-1 to A-5

marked which include Ex.A-4 M.V.I report, page 2 para Nos.13 to 17 clearly mention the condition of the vehicle as good and the permit in existence and that policy particulars viz., 50401/31/21/11/75, valid till 19.06.1996 of the accident was dated 30.09.1995 to say policy in subsistence and the insurer's name is United India Insurance Company and the owner's name, is the 1st respondent to the claim petition, S.Ramulu and the particulars of the driving licence and name of the driver Mallesam and the deceased was cleaner of the vehicle as per column No.18. The Tribunal though not referred the M.V.I. report fixed the liability on the insurer even the claim petition muchless evidence of P.Ws 1 and 2 mentioned the policy particulars.

4) It is now, the 2nd respondent insurer of the claim petition aggrieved by the award granting compensation of Rs.1,04,052/- with joint liability with interest at 9% p.a. maintained the appeal with the contentions that the Tribunal gravely erred in not considering the fact that the vehicle is not insured and the policy particulars not furnished and fixing of liability to indemnify once there is no policy even does not arise by ignoring the same. In support of the contention, the counsel placed reliance on the expression of this Court (another bench) in ***United India Insurance Co. Ltd. V. B.Jaya Lakshmi***[1] where no doubt it is categorically held with reference to Section

149 and 159 of the Motor Vehicles Act that the burden is on the claimants as to the existence of the policy to seek the insurer to indemnify on behalf of the owner of the vehicle.

5) True, there is no dispute on the proposition what all it laid down is the policy particulars to be furnished. If such is the case, even original is not furnished the insurance company could have been ascertained by serving notice to furnish the particulars as contemplated by Order XII Rule 8 under Form No.12 of Appendix C of C.P.C. It was not done. Further more, the M.V.I report filed which contains the policy particulars. There is no cross-examination disputing the policy particulars of column No.15 of the M.V.I. report referred supra. Though the burden is on the insurer under Section 106 of the Indian Evidence Act, within the personal knowledge of the policy particulars, if at all it is not the policy covered to furnish and thereby the expression no way helpful to the appellant-insurance company to dispute the claim awarded with joint liability to indemnify.

6) No doubt, it is now submitting and not even by virtue of any additional evidence the particulars furnished to receive as to the particulars in column No.15 of Ex.A-4 M.V.I. report, not corrected but for the oral say, when such is the case, it is open to the insurer to recover from the owner by showing there is no coverage of policy or the

risk under the policy by following the guidelines of ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[2].

7) Accordingly and in the result, while confirming the award of the Tribunal, the appeal is disposed of giving liberty to proceed, if policy not covered the risk to recover from the 6th respondent herein. There shall be no order as to costs.

8) Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

23.03.2016
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[1] 2004(4) ALD 99

[2] (2004) 13 SCC 224=2004-SAR(civil)-290