

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A.No.2406 of 2004

JUDGMENT:

This C.M.A is filed by the 2nd respondent/Insurance Company against the Award dated 28.10.1997 in O.P.No.646 of 1993 on the file of Chairman, MACT-cum-IV Additional District Judge, Guntur (for short “the Tribunal”) whereunder the Tribunal awarded compensation of Rs.3,00,000/- and fastened liability on the owner and Insurance Company jointly and severally.

2) The factual matrix of the case is thus:

a) On 07.07.1993 at about 10:00am, when the deceased—Yarlagadda Alluraiah was proceeding on his moped from Mangalagiri to Vijayawada and when he reached near Spensers Company, a mini lorry bearing No.AP 20 T 347 came from backside and hit him. The deceased was admitted in Government General Hospital, Guntur and while undergoing treatment he succumbed to injuries on 23.07.1993. The claimants who are the L.Rs of the deceased filed OP No.646 of 1993 against respondents 1 and 2, who are the owner and insurer of the offending lorry and claimed Rs.3,00,000/-.

b) The first respondent who is the owner of the crime vehicle remained *ex parte*.

c) The 2nd respondent/Insurance Company filed counter and opposed the claim denying all the material averments in the claim petition.

d) After full-fledged trial, the Tribunal awarded compensation of Rs.3,00,000/- with interest @ 12% p.a against respondents.

Hence the instant appeal.

3) Heard arguments of learned counsel for appellant/Insurance Company. There is no representation on behalf of respondents.

4) The main contention of the appellant/Insurance Company is that the driver of the lorry had no valid driving licence and he was having only driving licence of non-transport vehicle (LMV) whereas mini lorry was a transport vehicle and thus the owner and driver have willfully committed breach of the terms of the policy and therefore, the Tribunal ought to have exonerated the Insurance Company from the liability. The submission of learned counsel for appellant is that before they secured the driving licence particulars and produced before the Tribunal, the Award was already passed and hence they had no occasion to prove that the driver had no valid driving licence. Learned counsel thus prayed to allow the appeal and exonerate the Insurance Company or atleast pass a pay and recovery order.

5) The point for consideration is:

“Whether there are merits in this petition to allow?”

6) **POINT:** The accident, involvement of the mini lorry bearing No.AP 20 T 347 and moped and death of the deceased are not in dispute. The main plank of argument of learned counsel for appellant is that the driver of the mini lorry had no valid driving licence and he had driving licence to drive Light Motor Vehicle(non-transport) whereas the mini lorry was a transport vehicle and thus there was a breach of terms of the policy and therefore, the Insurance company deserves to be exonerated from liability. In the light of this argument, when the counter filed by the 2nd respondent/Insurance Company before the lower Tribunal is perused, it reveals that the Insurance Company has not taken any specific plea as taken now in the appeal. It should be noted that the counter is in the form of a general denial of the material averments of the claim petition and nothing more. In that view of the matter, it appears the Tribunal has not made any comment on the driving licence aspect of the lorry driver and passed the Award. When the Insurance Company has not taken a specific plea to the effect that the driver had no valid driving licence and he had only Light Motor Vehicle at the relevant time of accident and thereby the Insurance Company was not liable to answer the claim, it cannot now harp on this aspect in the appeal for the first time. It should be noted that the Insurance Company has not let in any evidence either oral or documentary before the lower Tribunal. In those circumstances, the lower Tribunal cannot be found fault for fastening liability on the owner and insurer.

7) In the result, I see no merits in the appeal and the same is accordingly dismissed by confirming the Award dated 28.10.1997 in O.P.No.646 of 1993 passed by the lower Tribunal. No costs.

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

U.DURGA PRASAD RAO, J

Date: 30.11.2016
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