

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

MACMA.No.1370 of 2016

JUDGMENT:

The New India Assurance Company Limited/the 2nd respondent in OP no.746 of 2003 on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum-XXIII Additional Chief Judge, Red Hills, Nampally, Hyderabad had filed this civil miscellaneous appeal assailing the decree dated 09.09.2005 of the said learned Chairman passed in the aforementioned OP.

2. I have heard the submissions of the learned counsel for the appellant/Insurance company ('the insurance company', for brevity) and the learned counsel for the 1st respondent/1st claimant. The 2nd respondent had died; and, for not bringing on record the legal representatives of the deceased 2nd respondent, the appeal against the 2nd respondent was already dismissed as abated. The 3rd respondent is the owner of the vehicle involved in the accident.

3. The facts necessary for consideration, in brief, are as follows:

The claimants, who are the parents of the deceased-Jathavath Babu, a minor boy aged 14 years, had filed the claim petition before the Tribunal claiming compensation for the loss sustained by them owing to the untimely death of their son on 06.11.2002 at about 10:00 hours, on account of his involvement in a motor vehicle accident, which had occurred when the tractor and trailer bearing registration nos. AP 15 V 653 and AP 22 T 5153, in which the deceased and his friend-Nenavath Ravinder were proceeding from Vityala village to attend to a road work at Raikal village, had capsized at the outskirts of Jogammaguda near the tank bund of Mayavani Cheruvu, due to the rash and negligent driving of its driver. The 2nd respondent insurance company having filed a counter had resisted the claim of the claimants. The 1st respondent/owner of the vehicle had remained *ex parte* before the Tribunal. On merits, the Tribunal had awarded a compensation of Rs.1,25,000/- with proportionate costs to the claimants, with subsequent

interest at 6% per annum from the date of the petition till the date of realisation, payable by the 1st respondent.

4. The grievance of the insurance company may be summed up as follows:

The Tribunal in the Award had held that the 1st respondent alone is liable to pay the compensation awarded to the claimants and had directed that the compensation as awarded with interest is payable by the 1st respondent-owner of the vehicle; but, the contents of the decree granted by the Tribunal, which are contrary to the contents of the award, are as follows:

1. That the petition be and the same is hereby allowed partly awarding total compensation of Rs.1,25,000/- (Rupees one lakh twenty five thousands only) to the petitioners against the respondents 1 and 2 holding that they are jointly and severally liable to pay the said compensation with proportionate costs and interest @ 6% per annum from the date of the petition till the date of realisation.
2. That the rest of the claim be and the same is hereby dismissed.
3. That the respondent no.2 is directed to deposit the amount within one month from the date of the order.
4. That an amount of RS.62,500/- (Rupees sixty thousands five hundred) each is apportioned to the petitioners 1 and 2 and both of them are permitted to withdraw the entire amount along with interest and the said amount is to be paid to them by way of account payee cheque of a nationalised bank nearer to their place of residence.
5. That the respondents 1 & 2 jointly and severally are also hereby directed to pay a sum of Rs1,710/- (Rupees one thousand seven hundred and ten only) to the petitioners towards costs.'

(Reproduced verbatim)

Under the award it was held that that 2nd respondent/insurance company is not liable and that the 1st respondent/owner of the vehicle is alone liable to pay the compensation awarded to the claimants. However, the contents of the decree granted would show that the liability is fastened against the insurance company as well. Therefore, the contents of the decree are quite contrary to the findings recorded in the award, where under and whereby the Tribunal had exonerated the insurance company from the liability to pay any compensation and fastened the liability on the 1st respondent alone.

5. At the hearing, the learned counsel for the insurance company would submit that the learned Tribunal having categorically held that the deceased was travelling as a gratuitous passenger in the vehicle and that the owner of the vehicle is alone responsible to pay the compensation had however erroneously mentioned in the decree that both the respondents 1 and 2 are jointly and severally liable to pay the compensation and, hence, the appeal is filed to direct the Tribunal to rectify the error in the Decree.

6. *Per contra*, the learned counsel for the first respondent/first claimant had first drawn the attention of this Court to the contents of the paragraph 11 of the Award wherein the Tribunal had referred to the contentions of the insurance company advanced before the Tribunal to the effect that 'if there is any breach of the conditions between the parties to the insurance contract, the insurance company can pay the amount and again recover the same from the 1st respondent'. He had then contended that in view of the said contest of the Insurance Company, the decree is not at variance with the Award of the Tribunal.

7. However, a perusal of the award granted by the Tribunal would make it clear that in the award, the learned Tribunal had referred to the ratio in the decision of the Supreme Court in **National Insurance Company Ltd., v. Baljit Kaur [2004 ACJ 428 SC]** wherein it was held that the risk of the passengers, who are carried for hire or reward or gratuitously in a goods vehicle, is not covered under the policy and that the insurance company is not liable to pay any compensation in a case of death of any such passenger. Further, the Tribunal had also recorded a finding that the 1st respondent alone is liable to pay the compensation awarded to the claimants. Nevertheless, in the contents of the decree it was stated that both the respondents are jointly and severally liable to pay the compensation awarded to the claimants. Thus, the contents of the decree are not in agreement with the award. As per law, the Decree shall agree with the judgment/award and the decree shall state correctly the relief/s granted or other determination; and the contents of the decree shall not be at variance with the award or

judgment, as the case may be. In the case on hand, there is an apparent error in the decree; and it might have arisen due to a clerical mistake or accidental slip, which might have occasioned while drafting the decree by the Staff of the Tribunal. Therefore, the contentions of the 1st claimant that the decree is not at variance with the award, in so far as the terms therein fastening the joint and several liability on the Insurance Company cannot be countenanced. In the facts and circumstances of the case, instead of filing this appeal, the Insurance Company ought to have requested the Tribunal to correct the mistakes in the decree by exercising its powers under section 152 of the Code of Civil Procedure. To the case on hand the legal maxim '***Actus curiae neminem gravabit***' is applicable. It means that the act of the Court shall prejudice no man. The Insurance Company therefore ought to have approached the Tribunal with a request to amend the decree as per the provision of section 152 of the Code to keep it in agreement with the award. Be that as it may.

8. Viewed thus, this court finds that the CMA can be disposed of by giving suitable directions.

9. Having regard to the facts and the circumstances of the case, the CMA is disposed of directing the Insurance Company to approach the Tribunal and make a request to the Tribunal to amend the decree to keep it in agreement with the award; and furnish copies of the amended Decree to the parties in accordance with the procedure established by law.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

31st March, 2016

Note:

- (1) The Registry is directed to return the certified copies of the Award and decree to the appellant under proper acknowledgment and as per the procedure.
- (2) Issue CC by 06th April, 2016

(B/o)
Vjl