HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.3697 of 2005

JUDGMENT:

The 2nd respondent-insurer among the two respondents including the owner of the jeep bearing No.KL-5-B-4962 maintained the appeal, impugning joint liability fixed on the insurer instead of exoneration for inmate of jeep not covered by Act policy apart from the award of the Tribunal dated 13.09.2005, in O.P.No.392 of 2002 filed under Section 166 of Motor Vehicles Act (for short 'the Act') on the file of the learned Chairman, Motor Accidents Claims Tribunal-District Judge, Adilabad, maintained by 6 claimants, including three minors one already declared as a major but for two, for the death of Sattaiah, for the claim of Rs.8,00,000/-, but the Tribunal granted compensation of Rs.4,73,508 with interest at 7.5% p.a. with joint liability on owner and insurer of the jeep. The policy once covers the risk then it has to be considered whether the overloading is contributed to the accident and if so whether the insurer can be totally exonerated or to be made liable to the highest claims confined to the seating capacity subject to valid permit. Here that difficulty does not arise in the factual matrix from the very Ex.B1-policy itself is not an act policy and not a comprehensive or standard package policy even the IRDI regulation of 2009 which is given retrospective effect clearly speaks even not specifically covered by collection of additional premium for the inmates of a passenger vehicle or a public transport vehicle insurer has to indemnify if it is standard package policy. Here once it is the act policy, the question of indemnifying inmates of the vehicle does not arise. Thereby the Tribunal went wrong in fixing joint liability instead of exoneration.

The MACMAMP.No.2413 of 2016 is allowed declaring the claim petition 3rd and 4th respondents as majors.

The learned counsel for the insurer/appellant reiterated the contentions in the grounds of appeal during the course of hearing.

Whereas it is the contention of the learned counsel for the claimants, for respondent No.6 owner of the vehicle having been served failed to attend, taken as heard, that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere, but for to dismiss the appeal.

Respondent No.5 stated died and the other legal representatives are on record and the same is recorded.

The factual matrix shows that the deceased, belongs to Adilabad District, while proceeding in the jeep of claim petition 1st respondent of Kerela State insured with the appellant herein, for Makaradarshan, due to the rash and negligent driving of its driver, near K.K.Road in front of Krushapally Church, the jeep turned turtle causing instantaneous death of the deceased. The very FIR shows that about 20 persons were travelling in the jeep which is with overloading on its face from the very documentary evidence placed reliance by the claimants covered by the said Ex.A1-FIR, apart from the evidence of PW.2 when he was confronted of his statement to the police during investigation there are about 20 persons including himself that were travelling. His evidence in chief itself shows himself, the deceased and some others of whom 5 were injured while travelling in the jeep, the accident occurred.

However the fact remains that while maintaining the appeal by the insurer sought for stay in M.A.C.M.A.M.P.No.6267 of 2005 and this Court by order dated 29.12.2005 directed to deposit half of the amount including interest and costs within six weeks therefrom by deducting any amount so far paid or deposited to represent the same and on such deposit, the major respondent alone is permitted to withdraw half share of her amount as ordered in the award without furnishing any security and interest of minors concerned shall be kept in fixed deposit as ordered by the Court below. It is even for the minors practically payment of the amount by virtue of the very interim stay order having regard as held by the Apex Court, no doubt in case no policy covered by a cheque dishonour while exonerating the insurer from liability observed what the amount deposited by the insurer pending appeal permitted by the Court, to that extent the insurer has to recover from the owner and not from the claimants vide **UIICL Vs. Lakshmamma**[1] as laid down by the Apex Court by following the IRDA Regulations dated 16.11.2009.

Accordingly and in the result, the appeal is partly allowed while setting aside the award of the Tribunal fixing joint liability on the insurer and upholding insurer is not made liable for the Act policy not covered the risk of the inmates of the passenger vehicle, however to the extent what is the compensation paid, deposited and permitted the insurer is not entitled to claim from claimants, but for from the owner. No costs.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 31.08.2016
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[1] 2012 (5) SCC 234