HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1868 of 2005

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the New India Assurance Company Limited (for brevity "the insurer"), aggrieved by the judgment and decree dated 27.04.2005, passed in O.P.No.1447 of 2002 by the XXII Additional Chief Judge-cum-Motor Accidents Claims Tribunal, City Criminal Court, Hyderabad (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.1,77,000/- was awarded towards compensation for the death of the deceased – Mohammed Ghousuddin, who died in an accident that occurred while travelling in a Lorry along with his family members, as against the claim of Rs.3,00,000/- laid by respondent Nos.1 to 3 under Section 166 of the Motor Vehicles Act, 1988 and Rule 475/1B of A.P. M.V. Rules, 1989 r/w. Section 140 of M.V. Act, 1988, seeking to set aside the said order and decree and to exonerate the Insurance Company from the liability, since there has been violation of the terms and conditions of the Insurance Policy.

2. The appellant – insurer is respondent No.2, respondent Nos.1 to 3 are petitioners, and respondent No.4 - owner of the lorry bearing No.KA 32/A 5115 is respondent No.1 in O.P.No.1447 of 2002. For the sake of convenience, the parties herein are referred to as they are arrayed in O.P.No.1447 of 2002 before the Tribunal.

3. The facts would show that on 05.05.2002 at 5.30 a.m., while the deceased – Mohammed Ghousuddin along with his daughter Kumari Rabia and 4 others was proceeding in a lorry bearing No.KA 32A 5115 sitting in the cabin along with the goods, since the driver of the said lorry drove it in a rash and negligent manner at high speed, dashed a stationed vehicle bearing No.AP 25B 4683, due to which the lorry turned upside down. Immediately, the deceased – Mohammed Ghousuddin was shifted to Gandhi Hospital, Secunderabad, where he succumbed to death.

4. Contending that the deceased – Mohammed Ghousuddin was working as a skilled labourer, earning Rs.4,000/- per month, the petitioners, who are the wife and two daughters of the deceased, respectively, sought a sum of Rs.3,00,000/- as compensation. Respondent No.4 – owner of the offending lorry was set exparte and the 2nd respondent – insurer filed counter by raising various pleas and sought to dismiss the claim petition.

5. Basing on the pleadings, the Tribunal framed two issues and having examined P.Ws.1 to 3 and marked Exs.A.1 to A.5 on behalf of the petitioners; while none were examined on behalf of the insurer, except marking Ex.B.1 – copy of the Insurance Policy, by placing reliance on a judgment of the Hon'ble Supreme Court in NATIONAL INSURANCE COMPANY LIMITED v. SWARAN SINGH AND OTHERS[1], held that there was no violation and granted the aforesaid amount as compensation. Challenging the same, the present Civil Miscellaneous Appeal is filed.

6. Heard Sri Naresh Byrapaneni, learned Standing Counsel for the appellant – insurer as well as Sri Bajarang Singh Thakur, learned counsel for respondent Nos.1 to 3 – petitioners.

7. The main contention of learned counsel for the petitioners is that the appellant - insurer has not taken any specific plea in its counter that the petitioners were travelling as gratuitous passengers. According to him, the said violation is to be proved by the insurer. He would further contend that since none of the witnesses were examined on behalf of the appellant – insurer, the Award passed by the Tribunal does not warrant interference.

8. On the other hand, learned Standing Counsel for the appellant – insurer relied on and produced a copy of the judgment dated 23.08.2011 in M.A.C.M.A.No.1866 of 2011, which relates to the claim made by one Kumari Rabia, who was the daughter of the deceased herein, who died in the very same accident, and contended that the deceased was viewed as an unauthorized passenger in the said case, which can be gathered from a copy of the judgment dated 23.08.2011, wherein this Court, placing reliance on the decision of the Hon'ble Supreme Court in NEW INDIA ASSURANCE COMPANY LIMITED v. ASHA RANI AND OTHERS[2], held that Kumari Rabia, who is the daughter of the deceased herein, who was travelling as a gratuitous passenger, is not even entitled to any amount under 'No fault liability' and since as per the directions of this Court, the Insurance Company has deposited half of the compensation amount, directed the

petitioners therein to recover the balance amount from the owner of the vehicle, while giving liberty to the insurer to proceed against the owner of the vehicle for recovery of the amount already paid to the petitioners.

9. When this Court has taken such a view in the aforesaid judgment dated 23.08.2011 in M.A.C.M.A.No.1866 of 2011, certainly, a different view cannot be expressed in this appeal. Further, on facts, a perusal of Ex.A.1 – certified copy of F.I.R. would clearly show that the deceased herein along with his family members boarded the offending Lorry as a midway passenger as they were unable to get any transport during night time. Merely because the appellant – insurer has not taken such a plea in its counter before the Tribunal, the same is not a valid ground to dismiss the appeal.

10. For the aforesaid reasons and subject to the directions issued in the judgment dated 23.08.2011 in M.A.C.M.A.No.1866 of 2011, the Civil Miscellaneous Appeal is allowed and the appellant – insurer is exonerated from its liability to pay the compensation. No order as to costs.

11. The proceeding sheet would reflect that this Court, by order dated 23.08.2005 in MA.CMA.MP.No.3139 of 2005, while granting interim stay, directed the petitioner/appellant to deposit half of the compensation, including interest and costs, within a period of six weeks. On 03.01.2006 in vacate MA.CMA.MP.No.5272 of 2006 in MA.CMA.MP.No.3139 of 2005. this Court, while making interim

order dated 23.08.2005, absolute, permitted the 1st respondent - claimant to withdraw her share of compensation without furnishing any security and the amount payable to respondent Nos.2 and 3 – claimants was ordered to be kept in a Fixed Deposit for a period of three years in a Nationalised Bank. Therefore, if any amount is withdrawn by the claimants, the same is to be recovered by the appellant/insurer from the 4th respondent – owner of the lorry. Respondent Nos.1 to 3 – claimants are at liberty to recover the balance compensation from the 4th respondent – owner of the lorry.

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

JUSTICE A. SHANKAR NARAYANA

27.06.2016.
Msr

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[1] 2004 (2) ALD 36 (SC)

[2] (2003) 2 SCC 223