

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1616 OF 2009

JUDGMENT:

The Oriental Insurance Company Limited, represented by its Divisional Manager, Tirupati, who is respondent No.2 in M.V.O.P. No.314 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Tirupati (for short, 'the Tribunal'), preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved over the order dated 08.12.2006, mainly on the ground that the risk of the coolies was not covered by the insurance policy.

2. By the aforesaid order, a sum of Rs.2,87,000/- with interest at 7.5% per annum was granted by the Tribunal for the death of one M.Sankarappa, while he was loading the accident vehicle, which was a lorry bearing registration No.AP 03V 4891, the door of it got opened and fell on him along with mud that was loaded, due to which, his death occurred ultimately.

3. The appellant herein, who is the insurer of the accident vehicle, is respondent No.2, while respondent Nos.1 to 5 herein, who are the wife, children and parents of the said M.Sankarappa, are the petitioners, and respondent No.6 herein, who is the owner of the lorry bearing registration No.AP 03V 4891, are respondent No.1 in the original petition.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

5. The fact-situation, in fact, is not disputed including the manner in which the accident did occur and ultimate death of the deceased.

6. Heard Sri N.Mohan Krishna, learned Standing Counsel for the appellant-insurer, and Sri V.Sudhakar Reddy, learned counsel for respondent Nos.1 to 5. Respondent No.6-owner of the vehicle, though, received notice, has not entered appearance.

7. It is no doubt true, Ex.B.1-insurance policy does not disclose about payment of the premium covering the risk of loading and unloading coolies, but, it covers risk of one employee, though, the employee is not specified in it, whether it refers to the driver of the vehicle or otherwise. Since a sum of Rs.100/- was paid to cover the risk of the driver under Ex.B.1, still, the deceased, while in the process of loading the lorry with mud, died on account of opening the door suddenly and falling along with mud on him, the care, which, ought to have taken by respondent No.1-owner for the safety of employee, through the driver or cleaner, was not taken. In that view of the matter, even construing the deceased as a third party, certainly, the liability of the Insurance Company cannot be exempted.

Therefore, the order under challenge does not suffer from any legal infirmity. Hence, there is no merit in the instant appeal.

8. Accordingly, the instant appeal is dismissed confirming the decree and order dated 08.12.2006 in M.V.O.P. No.314 of 2003 passed by the Tribunal in all respects. There shall be no order as to costs.

9. As a sequel thereto, miscellaneous petitions, if any pending in the instant appeal, stand closed.

30th August, 2016

siva

A. SHANKAR NARAYANA, J

