THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.No.2277 of 2005

JUDGMENT:

This appeal is preferred by the insurance company - third respondent in M.V.O.P.No.458 of 2002 on the file of the Court of the III Additional District Judge, Kakinada (for short, Tribunal).

2. The said MVOP was filed by the first respondent herein claiming a compensation of Rs.1,00,000/- for the injuries sustained by him in a motor accident that occurred on 01.06.2002. It was stated in the said MVOP that while the first respondent, along with his relatives, was proceeding to Visakhapatnam from Kakinada in connection with marriage alliance in an Ambassador car bearing No.AP35 9419, and in the early hours at 4.20 am on 02.06.2002 when they reached near CDR Hospital, Old Gajuwaka, the driver of the car drove it in a rash and negligent manner and dashed against a stationed lorry, as a result of which, the first respondent sustained fracture and other injuries. At the time of the accident, the first respondent was aged about 62 years and was earning Rs.6,000/- per month by doing pearls business. The case was not contested by the owner, but was contested by the insurance company.

3. The Tribunal framed the following issues.

> "1. Whether the accident had occurred due to the rash and negligent driving of Ambassador Car AP-35-9419 by the 1st respondent?
>
> 2. Whether the petitioner is entitled for compensation? If so, to what amount and from which of the respondents?
>
> 3. To what relief?"

4. The first respondent herein got himself examined as P.W.1 and got marked Exs.A.1 to A.3 on his behalf. On behalf of the appellant – insurance company, R.Ws.1 and 2 were examined and got marked Exs.B.1 to B.7.

5. The Tribunal, on the basis of the oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the Ambassador car bearing No.AP35 9419.

6. With regard to compensation, the Tribunal quantified the compensation to an amount of Rs.35,000/- and awarded the same, by its Award dated 27.05.2005. Before the Tribunal, the insurance company raised the plea with regard to non-coverage of the policy to the inmates, but the Tribunal negatived the said plea and held that Ex.B.5 policy covers the risk of inmates also.

7. This Court carefully perused Ex.B.5 policy, which is an act policy. The premium paid covers the risk of driver and risk of third parties apart from damage to the vehicle. In the absence of any coverage to the inmates of the vehicle, the inmates of the vehicle cannot be called as third parties in order to bring them within the fold of the policy of the insurance company.

8. In the circumstances, the Award of the Tribunal to the extent of liability of the appellant is set aside. It appears that by virtue of the orders of this Court dated 23.09.2005, the appellant was directed to deposit the entire amount of compensation including interest and costs and the first respondent was permitted to withdraw half of the amount without furnishing any security. Hence, the appellant is entitled to recover half of the amount withdrawn by the first respondent from the owner of the vehicle and it is permitted to withdraw the balance amount. In view of the withdrawal of half of the amount deposited by the appellant, it is open to the first respondent to recover the balance amount from the owner of the vehicle.

10. The appeal is, accordingly, allowed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

Date: 01.02.2016
TJMR