HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1333 OF 2009

JUDGMENT:

The National Insurance Company Limited-respondent No.2 in O.P. No.185 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge (Fast Track Court), Adilabad (for short, 'the Tribunal'), aggrieved by the order and decree dated 18.12.2006, whereby and whereunder, the Tribunal fastened joint and several liability for payment of Rs.2,69,000/- with interest at 7.5% per annum for the death of one D.Linga Reddy, preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') on the ground that the Tribunal went wrong in fastening liability on it (insurer), though there was fundamental violation of terms and conditions of the policy, which was pleaded in the counter even.

2. The appellant herein, who is the insurer of the accident vehicle, is respondent No.2, while respondent Nos.1 to 7 herein, who are the wife and children of the said Linga Reddy, are the petitioners, and respondent No.8 herein, who is owner of the tractor and trailer bearing registration Nos.AP 1T 320 and 321, is respondent No.1 in the original petition.

3. For the sake of convenience, the parties

hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. It is not in dispute that the said Linga Reddy (deceased) along with his villagers was taking the idol of Durga Goddes for immersion, during which time, since the driver of the tractor drove it in a rash and negligent manner, when it reached Hindi High School in Adilabad, he fell down from the tractor and trailer and came under the wheels, which ran over the chest and other parts of his person causing his instantaneous death. The petitioners, claiming that the deceased was earning Rs.5,000/-, sought a sum of Rs.2,50,000/- as compensation under Sections 163-A and 166(1)(c) of the Act.

5. Respondent Nos.1 and 2 filed counter. Respondent No.2 specifically taken a plea that permit conditions as well as policy conditions have been violated as it was a goods vehicle, in which the deceased and others were travelling as unauthorized passengers and, therefore, sought to dismiss the claim petition against it, though, respondent No.1 sought to fasten liability on the Insurance Company.

6. Basing on the said pleadings, the Tribunal framed four issues about the responsibility for the accident.

7. During enquiry, petitioner No.1 examined

herself as P.W.1 besides examining one M.Ellanna was examined as P.W.2 and marked Exs.A.1 to A.4 to substantiate their claim; whereas, on behalf of respondent No.2-insurer, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

8. On appraisal of evidence on record, the Tribunal has assessed Rs.2,69,000/- towards compensation and, accordingly, granted the same by applying structural formula calculating the amount under each head with interest at 7.5% per annum directing both the respondents jointly and severally to pay the same.

9. It is the aforesaid order which is under challenge in the instant appeal filed by insurer contending in the grounds that the Tribunal went wrong in fastening liability on the insurer though, there are fundamental violations of terms and conditions of the insurance policy done by the owner of the vehicle in allowing the deceased and others to take the idol in the trailer.

10. Heard Sri T.Ramulu, learned Standing Counsel for the appellant-insurer, and Sri S.Surender Reddy, learned counsel for respondent Nos.1 to 7-petitioners. Though, service was completed on respondent No.8, none appears for him.

11. Perused the order and the evidence on record. Nothing more is required except to look at the

arguments advanced by the learned Standing Counsel for the Insurance Company (appellant) in arriving at that there has been violation of terms and conditions of the policy and the deceased has to be construed as unauthorized passenger travelling in a goods vehicle. Therefore, there is every merit in the appeal.

12. Accordingly, the instant appeal is allowed setting aside the decree and order passed by the Tribunal so far as fastening liability on the Insurance Company-appellant is concerned, however, maintaining the order and decree so far as the liability of the owner is concerned and in all other respects. There shall be no order as to costs.

13. Turning to the deposit of compensation, respondent No.2-Insurance Company (appellant) has deposited half of the amount of compensation granted by the Tribunal including interest and proportionate costs, pursuant to the order dated 11.09.2007 in MACMA MP No.4824 of 2007 and even permission was granted to the petitioners to withdraw their respective shares without furnishing any security. In that view of the matter, the petitioners are entitled to recover the balance amount from the owner of the vehicle. The Insurance Company is at liberty to recover the amount deposited, from the owner of the vehicle.

14. As a sequel thereto, miscellaneous petitions, if

any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

10th August, 2016

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