HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.922 of 2006

JUDGMENT :

The appellant herein is the 2nd respondent to the claim petition M.O.P.No.1484 of 2003 before the IV additional District Judge-cum-Motor Accidents Claims Tribunal, Visakhapatnam. The claim was maintained under Section 166 of the Motor Vehicles Act (for short, 'the Act'), for a compensation of Rs.3,00,000/-, by the two claimants, no other than wife and so called adopted son of deceased Peda Sanni babu, aged about 45 years as per Ex.A-3 post mortem report, against the driver-cum-owner of the crime vehicle Yamaha bearing No.AP 31 R 2380. The appellant is Road Safety Club Private Limited with registered office at Chennai. The Tribunal by overruling the contest of the 2nd respondent/appellant of no liability, fixed joint liability by the award dated 30.11.2005 granting compensation of Rs.1,92,000/- with interest at 7.5%p.a.

2) It is impugning the same, the present appeal is maintained. Heard the learned counsel for the appellant/2nd respondent vis-à-vis learned counsel for the respondents 1 and 2 to the appeal, who are the claimants before the Tribunal for appeal-3rd respondent, claim

petition/1st respondent remained exparte before the Tribunal and did not participate in the appeal. Perused the material on record.

3) In so far as claim under Section 166 of the Act concerned, the Tribunal no doubt got jurisdiction to award compensation for the injuries of whatever nature either grievous or simple in nature with any permanent disability or the like or in case of a death, in deciding the compensation claim. Section 168 of the Act is the main section in relation to the scope of adjudicatory lis in a claim petition. The wording of Section 168 is as follows:

> "168. Award of the Claims Tribunal.—On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be: Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.
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> (2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.
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> (3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

4) On the scope of this section, law is clear that the liability under the Act on an insurer or owner or driver as the case may be is statutory in nature to award compensation from the internal contractual, express or implied, obligations to compensate for benefit of a third party. The three Judge bench of the Apex Court in *National Insurance Company Limited Vs. Swaran Singh & Others*[1] referring to Section 149, 163-A, 166 and 168 of the Act, clearly spelt out that it is not only to decide the dispute between the claimants and the owner/s and insurer/s respectively to indemnify, if any, but also the claim petition-respondents interse liability that can be decided by the Tribunal. In fact, the Apex Court in *National Insurance Co. Ltd V. Saju P.Pal*[2] observed particularly at para No.21, by placing reliance on the three Judge Bench earlier expression in *National Insurance Company Limited VS. Baljit Kaur*[3] para No.21 that so far as the scope and purport of Section 168 of the Act concerned, it is not only entitled by the Tribunal to determine the amount of claim as putforth by the claimants for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally, but also the dispute between the insurer on the one hand and the owner and driver of the vehicle involved in the

[1] (2004) 3 SCC 297=2004-ACJ-1
[2] (2013)2 SCC 41
[3] (2004)2 SCC-1

accident on the other hand in such a proceeding. It is in fact, referring to the scope of law, from the expressions right from *Oriental Insurance Company Limited Vs. Nanjappan & Others*[4] saying once there is a policy covering the risk, even there is any violation of the terms and conditions of the policy, the insurer cannot avoid liability from indemnifying the insured but for to pay and recover at best instead of filing and separate claim by proceeding while depositing the amount in the same claim petition as per award and by filing execution application.

5) Further, in this regard, the latest three Judge bench expression of the Apex Court in *khenyei v. New India Assurance Company Limited*[5] is clear by referring to earlier three Judge bench expression in *Pavan Kumar V. Hari Kishan Das*[6], and also the earlier expressions to it in *T.O.Anthony V. Karvarnan*[7], and *Mahendranath V. D.S.Mylarappa*[8]. It is observed in Khenyei (supra) that even some of the joint tort features who are liable pursuant to the statutory liability under the Act, not impleaded by a third party/claimant for compensation, the claim is not liable to be dismissed, but for to award against such of those

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[4] (2004) 13 SCC 224=2004-SAR(civil)-290
[5] (2015)9 SCC 273
[6] (2014)3 SCC 590
[7] (2008)3 SCC 748
[8] (2008)13 SCC 198

impleaded to be made liable and it is for them to recover against the others later by seeking apportionment and determination among the joint tort features interse, in an execution petition to be filed in the same award matter without need of maintaining a separate claim.

6) From this, here it is the crux to decide, whether the appellant/2nd respondent is one of the joint tort features and whether comes within the purview of the insurer or insured or driver of the vehicle respectively within the scope of Section 168 of the Act?

7) The learned counsel for the claimants/respondents 1 and 2 to the appeal placed reliance on a two Judge bench expression of the Apex Court in *Delhi Electric Supply Undertaking V. Basanti Devi*[9] where it came for consideration, the interpretation of the provisions of Section 182 and 185 of the Indian Contract Act on the doctrine of implied agency in saying agency need not always be express to make liable for the employers' negligence in not paying, pursuant to the undertaking to pay to the insurer, the installment amounts and whatever committed the breach therein to make the employer liable.

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[9] (1999)8 SCC 229

8) It is undisputedly a civil lis in Basanti Devi (Supra) arisen out of a civil suit before a common law Court, when approached against the final decision, ultimately by appeal to the Apex Court, it was so held by interpretation of the implied contractual obligation under the Contract of agency. Thus, from the above so far as the claim under Motor Vehicles Act, 1958 amended by Act, 1994 and the provisions existing as on date, particularly on the scope of Section 166, 163-A or 161 or 140 read with 165 and 168 of the Act concerned, the appellant whether comes within any of the meanings of the wording of Section 168 of the Act to decide the decision has no application.

9) The main document placed reliance by the claimants is Ex.A-6. It is a letter said to have been issued by the appellant, claim petition 2nd respondent, addressing to the owner of the vehicle. It is the claim petition 1st respondent owner - Satyanarayana Murthy.S, showing from the contents for he was admitted having been enrolled as a member of the club and there is an insurance coverage to his vehicle to indemnify, without mentioning the name of the insurance company, muchless the branch of it, but for saying policy No.6285034. There is an undertaking, practically, about policy obtained to indemnify for any road accident risk coverage so far as the 1st respondent having

been admitted as member by the 2nd respondent to the claim petition by virtue of this letter including for settlement by mutually agreeing if any. The contents of the letter not in dispute, even it is without admission before the trial Court in the lis covered by the appeal and relied on by the claimants, even the 1st respondent to whom the 2nd respondent (to the claim petition) addressed the letter, did not chose to contest. No doubt, the letter Ex.A-6 supra to be read with Exs.B-1 and B-2 placed reliance by the appellant/2nd respondent before the Tribunal, through their witness R.W-1. Ex.B-1 letter issued by H.D.F.C bank addressing the Road Safety Club Private Limited, on 29.10.2004 saying cheque bearing No.567527 from the account No.0040330002314 for Rs.12,000/- presented by the club through covering letter was returned unpaid on 23.10.2001 since dishonoured for the funds insufficient. Ex.B-1 letter is issued pursuant to the request by the club on 29.10.2004 (even date), to that affect. No doubt said cheque or bank return slip are not enclosed, nor later even submitted. Coming to Ex.B-2 the membership certificate that is referred in Ex.A-6 issued by the appellants/2nd respondent in favour of the claim petition/1st respondent bearing certificate No.80711 referring to said cheque as consideration for the certificate by enrolment as a member on 30.09.2001 in relation to the vehicle registered No.AP 31 R 2380 mentioned that the membership is valid subject to realization of cheque. It is no doubt mentions from Ex.B-1 membership certificate is a provisional and the validity is subject to realization of the amount covered by the cheque. The cheque when returned dishonoured, any notice issued about the dishonour and subsequently paid or not and if not paid, any recourse taken, is a cloud before this Court for those facts are not presented, muchless proved. But for the contest of the 2nd respondent/appellant of the cheque was dishonoured and amount not paid and there is no membership to indemnify to undertake. In the factual scenario, there appears to be something interse between the claim petition respondents 1 and 2 of who cheated when if any, that is entirely a different issue inter se, but for to say their liability is also depending upon those factors.

10) In fact, so far as 2nd respondent concerned, it is the appellant, once even from the above, apart from the disputed membership from the cheque dishonoured without proving, further recourse taken if any, and whether cancelled or not, if required to cancel specifically, that even does not come within the purview of the admission into membership even taken Ex.A-6 mentions a policy taken but for to insist for those particulars, cannot be made the claim

petition 2nd respondent/appellant either within the meaning of owner or insurer or driver, even to decide interse claim between owner of the vehicle, 1st respondent, and the club/2nd respondent to satisfy the claim from 2nd respondent if any in favour of the claimants.

11) Thereby, the remedy if any against the appellant/2nd respondent is outside the purview of the provisions of the Act, 1988 amended by the Act, 1994 even taken the expression placed reliance by the claimants of the Apex Court in the year 1999 in *Delhi Electric Supply Undertaking* supra implies a contractual obligation and agency between 1st respondent and 2nd respondent, nothing from that to cull out to say either as owner or as insurer, but for an independent contract of agency impliedly lies between them, from the contents of Ex.B-1, B-2 and A-6 supra. Once such is the case, the remedy can be by approaching the common law civil Court to proceed against the appellant/2nd respondent and thereby subject to that observation and to that extent, the appeal can be allowed for no direct liability within the meaning of Section 168 read with 149 and 168 of the Act in the claim petition to fasten directly any liability on the appellant/2nd respondent to satisfy the claim of the claimants.

12) However, it is made clear in disposal of the appeal by allowing the same to the above extent that, it will not take away any remedy of the 1st respondent, the owner of the vehicle, to proceed against the 2nd respondent or for such realization of the claim petition amount, now confined against the 1st respondent owner of the vehicle from the award of the Tribunal, for its recovery to proceed by the claimants also by jointly the respondents 1 and 2 in a civil lis to proceed against and in such an event, Section 14 of the Limitation Act benefit of bonafide prosecution in a wrong forum so far as the appellant/2nd respondent also is made available by this order.

13) With the above observations, the appeal is partly allowed. There shall be no order as costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

27.09.2016
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