HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1505 OF 2009

JUDGMENT:

The National Insurance Company Limited, represented by its Divisional Manager, Ananthapur, who is respondent No.2 in M.V.O.P. No.374 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Kurnool (for short, 'the Tribunal'), preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved over the liability fastened on it by the order dated 10.04.2006, though, the insurance policy would come into force subsequent to the taking place of accident, but, still, the Tribunal mulcted liability on it without properly appreciating that the insurance policy comes into force only from 10-00 a.m. on 30.01.2002 and will be in force till mid-night of 29.01.2003.

2. By the aforesaid order, the Tribunal while granting compensation of Rs.2,13,000/- with interest at 7.5% per annum, made the Insurance Company jointly and severally liable to pay compensation on the ground that it has to indemnify the insured by virtue of the insurance policy marked as Ex.B.1.

3. The appellant herein, who is the insurer of the accident vehicle, is respondent No.2, while respondent Nos.1 to 4 herein, who are the children and husband of one Keshamma, are the petitioners,

and respondent No.5 herein, who is the owner of the tipper bearing registration No.AP 9W 5371, is 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. So far as the fact-situation and the manner in which the accident did take place are concerned, there is no dispute between the parties. The accident took place on the intervening night of 28/29.01.2002, in which the said Keshamma (deceased) died, whose legal representatives are petitioner Nos.1 to 4, being her children and husband, while she was engaged as coolie by respondent No.1 for loading the sand in the tipper bearing registration No.AP 9W 5371 from Penna riverbed at Sajjaladinne village near Tadipatri town.

6. Before the Tribunal, both the respondents filed separate counters.

7. The Tribunal, having framed relevant issues and examining petitioner No.4 as P.W.1 and marking Exs.A.1 to A.5 on behalf of the petitioners, and also marking a copy of insurance policy as Ex.B.1 on behalf of respondent No.2-Insurance Company on consent, granted compensation mentioned in the above holding both the respondents jointly and severally liable to pay the same.

8. It is the aforesaid order which is under challenge in the instant appeal filed by insurer, contending in the grounds that the Tribunal ought not to have mulcted liability on it without properly appreciating that the insurance policy comes into force only from 10-00 a.m. on 30.01.2002 and will be in force till mid-night of 29.01.2003.

9. Heard Sri Katta Laxmi Prasad, learned Standing Counsel for the appellant-insurer, and Sri C.Hanumantha Rayudu, learned counsel for respondent Nos.1 to 4-petitioners. No representation for respondent No.5.

10. Perused the insurance policy marked as Ex.B.1, which would, in unambiguous terms, show that the insurance coverage would commence from 10-00 a.m. on 30.01.2002 and would be valid till mid-night of 29.01.2003. Admittedly, the accident did occur on the intervening night of 28/29.01.2002. When specific time is mentioned for commencement of the insurance policy, certainly, it has to be held in the present case, that on the date when accident took place, the insurance policy was not in force and came into force only subsequent to taking place of the accident. Thus, the Tribunal deviated in appreciating the said aspect despite marking Ex.B.1-copy of insurance policy on mutual consent. Hence, the order and decree under challenge would not sustain in so far as fastening liability on the Insurance Company is concerned.

11. Accordingly, the instant appeal is allowed setting aside the decree and order dated 10.04.2006 in M.V.O.P. No.374 of 2004 passed by the Tribunal to the extent of fastening liability on the appellant-Insurance Company, however, maintaining the said order and decree in all other respects so far as liability of respondent No.1-owner of the vehicle is concerned.

12. The amount, which was deposited to the credit of the original petition by the Insurance Company pursuant to the order dated 17.07.2007 passed by this Court in M.A.C.M.A. No.3279 of 2007, is, if still, lying to the credit of the said original petition, the Insurance Company is at liberty to claim for return of the said amount. The petitioners are at liberty to recover the compensation amount from the owner of the vehicle.

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

A. SHANKAR NARAYANA, J

29th August, 2016

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