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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.5 of 2013

JUDGMENT:

This appeal is filed by the insurance company against the order dated 11-07-2012 passed in OP No.186 of 2008 by the Chairman, Motor Accident Claims Tribunal-cum-II Addl. District Judge, Karimnagar at Jagtial, wherein the Tribunal, as against the claim of Rs.1,50,000/-, granted compensation of Rs.82,000/-.

2. Facts stated are:-The mother of the claimant-1st respondent herein (since deceased by LRs) on the fateful, day at about 5-00 pm was standing at Thatlavia X roads to go to her native village Dharmajipet and, at that time a tractor and trailer bearing registration no.AP 15 AH 0150, with a load of bricks, came at high speed and hit her, due to the impact of the same, the claimant's mother fell down and sustained injuries and succumbed to death. That by the date of the accident, the deceased was earning Rs.3,000/- per month by doing labour work. That the accident occurred due to the rash and negligent driving of the tractor by its driver.

3. Counter affidavits were filed by the owner of the tractor and trailer and the insurance company. While it was the case of the owner of the tractor and trailer that the tractor and trailer involved in the accident in question was duly insured and there was a valid policy covering the date of the accident, the insurance company was liable to pay the

compensation, but the case of the insurance company-appellant herein was that the driver of the tractor trailer had no valid driving license as on the date of the accident and, therefore, the insurance was not liable to pay the compensation.

4. In this appeal, learned counsel for the appellant-insurance company contended in spite of the specific plea taken in the counter affidavit before the Tribunal that the driver of the tractor and trailer was not having valid driving license and though the owner of the tractor and trailer did not chose to file any documents to the contrary, the Tribunal erred in fixing the liability on the appellant-insurance company, which is erroneous and liable to be set aside.

5. On the other hand, learned counsel for claimant-respondent no.1 contended that even assuming that the driver of the tractor and trailer was not having valid driving license, inasmuch as there was a valid policy as on the date of the accident and the said violation only amounts to violation of one of the policy conditions among others, the appellant-insurance company is liable to pay and recover the amount from the 2nd respondent-owner of the tractor and trailer by applying the principle laid down by the Supreme Court in *NATIONAL INSURANCE COMPANY LIMITED vs. SWARAN SINGH* (2004 ACJ 1).

6. There is no dispute as to the date and nature of the accident and the fact that the claimant's mother succumbing to the injuries sustained in the said accident. The only dispute

is with regard to the quantum of compensation and the liability of the insurance company to pay the compensation.

7. To prove his claim, the claimant himself examined as PW-1 and considering the age of the deceased at 72 years and after taking the income of the deceased at Rs.2,000/-, after applicable deductions and also applying the appropriate multiplier, the Tribunal granted just and reasonable compensation, the same is based on acceptable evidence, does not warrant any interference.

8. So far as the question of liability to pay the compensation is concerned, in the light of the decision in *Swaran Singh's* case supra, the appellant-insurance company is liable to pay the compensation to the claimant-1st respondent (since deceased, by LRs) and recover the same from the owner-2nd respondent who is the owner of the tractor and trailer in the view of the fact that tractor and trailer in question was covered by valid policy.

9. In the result, the appeal is disposed of and the order of the Tribunal is modified to the extent indicate above. During the pendency of the appeal the claimant seems to have died, the compensation amount shall be shared by the LRs, who are wife, daughter and son, in equal proportion. Miscellaneous petitions, if any pending in this case shall also stand disposed of. There shall be no order as to costs.

REDDY, J

A. RAJASHEKER

Dated: 27-01-2016
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DATED 27-01-2016