THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A.No.659 of 2008

JUDGMENT:

This appeal is filed by the appellant/2nd respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order dated 06.12.2007, passed by the Motor Accidents Claims Tribunal-cum-I-Additional District Judge, Kadapa, in M.V.O.P.No.505 of 2006, awarding compensation of Rs.4,54,000/-.

2. The claimants filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.6,00,000/- on account of death of Shaik Khaleel (hereinafter referred to as 'the deceased') in a road traffic accident.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that the deceased was aged about 25 years, doing tailoring work and earning Rs.5,000/- to Rs.6,000/- per month. The claimants are wife, daughter and parents of the deceased. On 15.02.2006 the deceased along with his friends were proceeding in the 1st respondent's jeep bearing No.AP-05-F-6359 from V.N.Palli to Animala Village and at about 3:00 p.m. when they were reached near Animala turning, the driver of the jeep drove it in a rash and negligent manner with high speed and lost control over it, as a result the jeep turned turtle, resulting simple and grievous injuries to the inmates. The injured persons were shifted to Government Hospital, Vempalli, where the doctor declared one Shaik Khaleel died. A case in

Crime No.5 of 2006 was registered against the driver of the jeep by Gangireddipalli Police Station. According to the claimants, the vehicle was injured with the Insurance Company and the policy was in force at the time of accident and the 1st respondent, being the owner, and the 2nd respondent, being the insurer, are jointly liable to pay the compensation to the claimants.

5. The 1st respondent filed counter admitting the accident and the deceased died due to negligent driving of the driver of his jeep and specifically stated that he has not violated any terms and conditions of the policy and the 2nd respondent is liable to indemnify the liability.

6. The 2nd respondent filed counter denying all the material averments and putting the claimants to prove the income of the deceased. The 2nd respondent further stated that there is no negligence on the part of the driver of the jeep and the 1st respondent has not paid any additional premium covering the risk of the inmates of the jeep and as such the 2nd respondent is not liable to pay any compensation.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs.1 to 3 were examined and got marked Exs.A.1 to A.4. On behalf of the 2nd respondent, RW.1 was examined and got marked Exs.B.1 and B.2.

8. After considering the oral and documentary evidence, the Tribunal awarded compensation of Rs.4,54,000/- along with interest at 7.5% p.a. with joint liability against respondents 1 and 2.

9. Aggrieved by the order passed by the Tribunal, the 2nd respondent-Insurance Company preferred the present appeal.

10. Learned counsel for the 2nd respondent-appellant argued that the deceased was travelling in the jeep as an unauthorized passenger and the policy is an act policy and it will not cover the risk of the inmates of the vehicle and that the 1st respondent has not paid any additional premium covering the risk of the inmates of the jeep. Therefore, the 2nd respondent is not liable to pay any compensation and prayed the Court to set aside the order passed by the Tribunal. It is further argued that half of the compensation amount deposited in the Court and the Tribunal permitted the major claimants to withdraw their proportionate share, therefore, prayed the Court that the Insurance Company may be permitted to recover the compensation, which was withdrawn by the claimants. It is further argued that the claimant, who failed to receive the compensation, can proceed against the owner of the vehicle. It is also argued that permission may be accorded to withdraw the amount deposited in the name of the minor and finally prayed the Court to set aside the order dated 06.12.2007.

11. Notices to the claimants were served, but no representation was made and none appeared to argue the case.

12. Having regard to the submissions made by the learned counsel for the 2nd respondent, the point that arises for consideration is:

> Whether the 2nd respondent-appellant has made out any case to set aside the order dated 06.12.2007 passed by the Tribunal in M.V.O.P.No.505 of 2006?

POINT:

13. A perusal of the oral and documentary evidence would show that there is no dispute that the accident occurred due to rash and negligent driving of the driver of the jeep bearing No.AP 05 F 6359. This finding of the Tribunal regarding the manner of accident needs no interference.

14. Coming to the liability of the 2nd respondent is concerned, admittedly the policy is an act policy and the 1st respondent, who is the owner of the vehicle, has not paid any premium to cover the risk of the inmates of the jeep. Ex.B.1 is the policy, which proves this fact. The Tribunal, without verifying whether it is an act policy or any premium has been paid under the said policy, awarded the compensation against the 2nd respondent and the said finding of the Tribunal needs interference by this Court as the 2nd respondent-Insurance Company is not liable to pay any compensation to the claimants under Ex.B.1 policy. Therefore, the order passed on 06.12.2007 is liable to be set aside and the 2nd respondent-appellant is entitled to withdraw the amount of compensation deposited in the Court and also entitled to take steps to recover the amount already withdrawn by the claimants from the owner of the vehicle and if the claimants want any compensation they can proceed against the owner of the vehicle.

15. With this observation, the appeal is allowed.

16. Miscellaneous petitions pending, if any, shall stand closed.

ANIS, J

18th November 2016.
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