HON'BLE SRI JUSTICE S. RAVI KUMAR

M.A.C.M.A No.559 of 2013

JUDGMENT:

This appeal is preferred questioning judgment and decree dated 19.11.2007 in M.O.P.No.1615 of 2005 on the file of VII Additional District Judge (FTC), Visakhapatnam.

2. First respondent herein filed the above O.P represented by her father as guardian claiming a sum of Rs.1,00,000/- as compensation for the injury sustained by her in a motor accident occurred on 30.08.2005 at 4.30 p.m. near Kancharapalem fly over bridge, Visakhapatnam. The claim was resisted by insurance company and the trial Court on a consideration of oral and documentary evidence, granted Rs.61,000/- with interest @ 7.5% p.a. from the date of petition till the date of realization. Questioning the same, insurance company preferred the present appeal.

3. Heard arguments.

4. Advocate for appellant submitted that tribunal ought to have seen that driver of the jeep violated policy conditions as the driver drove the jeep without appropriate licence and the tribunal ought to have dismissed the application against insurance company. He further submitted that tribunal by following the decision of ***National Insurance Company v. Swaran Singh***[1] case given liberty to insurance company to recover the compensation from the owner.

5. Now the main grievance of insurance company is that

there is no valid licence as on the date of accident and insurance company is not liable. As seen from the material, this appeal is dismissed against the beneficiary i.e., claimant on 15.08.2011 and no steps are taken by the insurance company against said dismissal order and the appeal now pending is only against the owner of the vehicle, who is second respondent herein.

6. As seen from the material, the tribunal considered the objection of insurance company with regard to its liability. In **Swaran Singh**'s case, Supreme Court held even violation by driver, insurance company is liable but only option given to insurance company is to pay first and recover it from the owner and the same decision is followed by the tribunal and there is nothing wrong in the order of tribunal in directing the insurance company to recover compensation from the owner. Admittedly, insurance company has not questioned the quantum and it only questioned the liability. But as the liability aspect was considered as per decision of Supreme Court in **Swaran Singh**'s case, the contention of insurance company cannot be accepted. Further, as the appeal is already dismissed against claimant, the objection with regard to liability is not tenable.

7. For these reasons, I am of the view that there are no grounds to interfere with the order of lower tribunal dated 19.11.2007 and that the appeal is devoid of merits and liable to be dismissed.

8. Accordingly, this M.A.C.M.A is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 16-02-2016.
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[1] 2004 ACJ 1