

SMT JUSTICE T. RAJANI

MACMA.No.1039 of 2008

JUDGMENT:

This appeal is preferred by the appellant-insurance company, who is the third respondent before the Court below, assailing the order of the VII Additional District Judge, Mahabubnagar District in OP.No.403 of 2002 dated 07.11.2007 on the grounds that the Court below did not consider the documents filed by the claimants i.e. FIR and the charge sheet, which clearly establish that the deceased caused the accident by his own negligence by sitting on the bonnet of the jeep and ought to have noted that the owner of the jeep violated the conditions of the policy by permitting the deceased to travel on the bonnet of the jeep.

2. Heard both the counsel.
3. Counsel for the appellant contends that the contents of the FIR, which is a document, filed by the claimants themselves, would show that the deceased was travelling by sitting on the bonnet.
4. A perusal of the FIR shows, true, shows that the deceased was travelling by sitting on the bonnet and when the driver of the jeep applied sudden brakes, he fell down and met his end. The Court below, however, did not discuss the said aspect. The said aspect did not come in the evidence of the witness and the eye-witness, who was examined as P.W.2, was not cross-

examined specifically on the said aspect. However, there was a suggestion that the deceased himself is responsible for the accident.

5. Counsel for the respondents/claimants contends very vehemently that the contents of the FIR cannot be looked into simply because it is marked and the insurance company cannot be permitted to raise that plea at the stage of the appeal, when it did not take the said plea in the Court below.

6. A perusal of the counter filed by the appellant would show that there is no specific plea that the deceased was sitting on the bonnet of the jeep, but it denied negligence on the part of the driver of the jeep. It was averred in the counter that the accident took place due to the negligence on the part of the deceased as he was travelling in the said vehicle as gratuitous passenger. However, when the issue of negligence is framed by the Court, it is the duty of the Court to appreciate all the facts, which are brought before the Court in respect of the said issue. The complaint, which is filed by the claimants themselves, would clearly show that the deceased was travelling sitting on the bonnet.

7. Counsel for the appellant relied on the decision of the High Court of Gujarat in *NEW INDIA ASSURANCE CO. LTD. v. JAYSUKHLAL MAGANLAL DOSHI*¹ wherein it was held as under:

¹ 2014 ACJ 1075

“The situation is however different where the documents are produced by a party who proposed to rely on the same, but at the same time denies a particular fact stated in the document, which does not suit his case, so as to fix the liability anyhow on the insurance company. The claimant, who relied and produced the document, cannot say that on the strength of the contents of such a document, only the factum of accident should be believed whereas the other contents should not be believed. We are not oblivious of the fact that ordinarily an averment made in the first information report would not be admissible in evidence *per se*, but as the averment made in the first information report as regards obtaining the vehicle on hire has been made a part of the claim petition, there is no doubt whatsoever that the Tribunal and consequently the appellate courts would be entitled to look into the same.”

8. The above decision persuades this Court. Even by a common sense understanding, any person cannot be permitted to rely on part of the document, which is favourable to him and plead not to look into the other contents of the document, which are against him. Hence, considering the contents of the report, this Court comes to an opinion that there is contribution on the part of the deceased also, for the accident that occurred, resulting in his death. But as regards the percentage of negligence on the part of the deceased, this Court opines that the negligence is more on the part of the driver of the jeep in permitting the deceased to sit on the bonnet. He is the person, who knows about his capacity of driving and if he permits a passenger to sit on the bonnet, it implies that he undertakes

their safety also while driving the vehicle. But, however, the deceased is also expected to understand the consequences of his sitting on the bonnet of the jeep and the eventualities that would be caused when he sits in such a manner. Hence, considering the circumstances of the case, 25% can be fixed as the negligence on the part of the deceased and 75% negligence on the part of the driver of the jeep. Since it is a case of contributory negligence, the claimants have to forego 25% of the compensation awarded.

9. The Court below awarded Rs.2,11,500/- as compensation, out of which Rs.2,11,500/- x 25% = Rs.52,875/- has to be deducted towards negligence of the deceased. Thus, the claimants would be entitled to compensation of Rs.2,11,500/- - Rs.52,875/- = Rs.1,58,625/- with proportionate costs.

The civil miscellaneous appeal is allowed in part. As a sequel, the miscellaneous applications, if any, shall stand closed.

November 2, 2017
DSK

T. RAJANI, J