HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA No.157 OF 2006

JUDGMENT:

This appeal is arising out of order and decree dated 28.04.2005 in O.P.No.474 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, West Godavari, Eluru (for short "the Tribunal").

The brief facts of the case are that the respondents 1 and 2 herein/claimants filed O.P.No.474 of 2003 under Section 166 of the Motor Vehicles Act claiming compensation of Rs.1,00,000/- on account of the death of their minor daughter Chavakula Veeramani in a motor vehicle accident occurred on 15-08-1999. On the fateful day, while the claimants along with the deceased and neighbours were travelling in the lorry bearing No.A.T.K.1769, which was driven by the 1st respondent, in a rash and negligent manner, it fell into an Irrigation channel by the side of the road. The claimants received injuries and their minor daughter has received head injury and on the next day, she succumbed to the injuries received in the accident.

The 1st respondent is the driver, the 2nd respondent is the owner and the 3rd respondent is the insurer of the crime vehicle/lorry.

Respondents 1 and 2 remained ex-parte before the Tribunal.

The 3rd respondent has filed counter affidavit denying its liability and stating that there is violation of terms and conditions of insurance policy and the compensation claimed by the claimants is excessive.

The Tribunal, on consideration of evidence on record, held that the accident occurred due to rash and negligent driving of the driver of lorry bearing No.A.T.K.1769 driven by its driver/1st respondent and awarded compensation of Rs.70,000/- with interest at 9% per annum as against the claim of Rs.1,00,000/-. The Tribunal also directed the Insurance Company to deposit that amount and recover the same from the owner of the vehicle.

Aggrieved by the order passed by the Tribunal, the Oriental Insurance Company Limited/3rd respondent has preferred this appeal.

Learned counsel for the appellant contended that the deceased travelled in a goods vehicle as an unauthorized passenger. The lorry involved in the accident is having only Act Policy and there is no coverage for the passengers, who travel in the lorry. No extra premium is paid for coverage of the risk. Therefore, there is no liability for the insurer to pay any compensation. It is further contended that the Tribunal has fixed the liability against the insurer directing it to pay compensation at the first instance and recover the same from the owner, without there being any liability on the insurer and therefore, the impugned order against the insurer is liable to be set aside.

Learned counsel for the respondents/claimants submits that the deceased travelled in the lorry as a Fare Paid Passenger and the Tribunal also held that the deceased travelled as Fare Paid Passenger and therefore, there is coverage of liability for the deceased.

At the outset, it is obvious that the Tribunal has fixed the liability against respondents 1 to 3 for payment of compensation to the claimants. The 3rd respondent, who is the insurer, contended that as there is no coverage for the passengers, who travel in a goods vehicle, the insurer is not liable to pay any compensation. The vehicle is insured under the Act Policy, which does not cover the liability of the persons, who travel in a goods vehicle. It is not even a case where the owner of goods is travelling in a goods vehicle. The deceased said to have travelled as a fare paid passenger. There is no coverage for any passenger to travel in a goods vehicle. Therefore, there is no liability for the insurer to pay any compensation to the claimants. There is no justification even for ordering pay and recovery by the Tribunal. Therefore, the finding of the Tribunal is not sustainable as far as fixation of liability against the insurer. As far as other findings of the Tribunal are concerned, i.e., fixing liability against respondents 1 and 2, they do not require any interference in this appeal.

In the result, the appeal is allowed setting aside the order passed by the Tribunal with regard to ordering pay and recovery by the insurer. The rest of the award shall be intact.

As the insurer has already deposited half of the amount, the insurer may recover that amount from the owner of the vehicle. Respondents 1 and 2 shall deposit half of the amount payable to the claimants within two months from the date of receipt of a copy of this order. No order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date: 18-08-2017
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