HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.406 of 2010

JUDGMENT:

Impugning the claim partly allowed against the owner and dismissing against the Insurer of the tractor bearing No.AP 73 U 3766, the appeal is maintained by the owner of the vehicle against the insurer and the claimants, no other than wife, two major sons and mother of the deceased by name Ibrahim, aged about 43 years as per Ex.A.3 postmortem report as on the date of accident 20.03.2008. The claim maintained in M.V.O.P.No.508 of 2008 was under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act'), on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Guntur (for short, 'Tribunal'), for a compensation of Rs.14,00,000/- against said owner and Insurer of the tractor.

2. The averments in the claim petition are that on 20.03.2008, while the deceased along with one Bellamkonda Meera Saheb (Pillion rider) were proceeding on motor cycle from Guntur and when by the side of the Electricity Office where there was a bridge, he stopped his motor cycle, the tractor supra being driven by its driver at high speed in a rash and negligent manner, coming from Perecherla side hit the motor cycle, due to which said Ibrahim on the bike for the injuries sustained was died in the way to hospital and Meera Saheb-the pillion rider received grievous injuries.

3. On contest from both sides, the tribunal by its award dated 20.08.2009 granted compensation of Rs.9,74,000/- with interest at 7%p.a. by fixing liability against the 1st respondent-owner of the tractor, dismissing the claim against the 2nd respondent-Insurer.

4. The contentions in the grounds of appeal vis-à-vis the oral submissions of the appellant-owner of the vehicle are that the tribunal

gravely erred in exonerating the Insurer though there is a cover note No.4906942, valid from 15.05.2007 to 14.05.2008 which covers the risk by the date of accident 20.03.2008 and even the driver of the tractor also having valid driving license and hence to fix liability against the Insurer also to indemnify, apart from quantum is claimed excessive.

5. Whereas, learned counsel for the Insurer submits that there is nothing to interfere with the award of the tribunal for this Court while sitting in appeal. The claimants though served but not turn up, hence taken as heard.

6. Heard and perused the material on record.

7. The R.W.1 is the employer of the Insurer. He categorically deposed that the company did not issue cover note Ex.B.5 bearing No.ME4906942 to show the tractor of the appellant-owner was insured with the Insurer. The evidence of the R.W.1 is that the book containing series of cover notes was lost at Hyderabad and the Customer Service Manager at Hyderabad presented the report to Malakpet police under Ex.B.1. It is not a case of any paper publication issued bewaring any vehicle owners to be duped by issuing cover notes by any person other than the Insurance Company. No doubt registered notice issued to the owner and driver of the tractor and there is acknowledgment of the notice by them. It is only to produce the Insurance policy and driving license extract but there is no response. No doubt during evidence of R.Ws.1 and 3 driving license extract of the driver of the tractor and cover note Ex.B.5 were exhibited as Exs.B.4 and B.5. The tribunal therefrom observed that the owner did not even prove about payment of premium for getting policy under the so called cover note. If at all the cover note undisputedly belongs to the company's serial number, issued by any agent, it is crucial for the owner to cause examine the agent at least to summon as a Court witness by mentioning so,

but he did not do so. It is not even a case by identifying so and so agent on behalf of the company issued the cover note. Then the tribunal rightly believed the story of cover notebook was lost and complaint given. In the absence of examining the person who issued cover note and showing payment of premium, the Insurer cannot be made liable that too when shown lodged a police complaint about the book and if cover note genuinely issued, policy could be issued within time stipulated and the owner did not even claim for policy much less by giving any notice also substantiates the conclusion of the cover note book lost by the company and same person who came to it unauthorizedly even manipulated in issuing cover note as if to cover the risk, the company cannot be made liable unless shown company's agent to bind the company, issuing the cover note by collecting premium by showing receipt. For lacking of above things, when rightly concluded by the tribunal in dismissing the claim against the Insurer, for the Insurer did not issue any cover note covered by Ex.B.5 and thereby for this Court while sitting in appeal there is nothing to interfere.

8. In the result, the appeal is dismissed, but for remedy open to the appellant/owner of the vehicle is to proceed against the person who allegedly issued cover note if any for damages for the loss suffered therefrom or for proceeding to prefer a criminal case for any cheating. There is no order as to costs. Consequently, miscellaneous petitions, if any pending, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:14.02.2017.
Vvr.