THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.1911 of 2009

Date: .06.2017

Between:

United India Insurance Co.Ltd.,
Represented by its Branch manger,
Branch Office, Biruduraju Towers,
Trunk road, Ongole, Prakasam District.

... Appellant/Respondent No.2.

And

Gopireddy Meena and others.

... Respondents

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JUDGMENT:

The Insurance Company aggrieved by the order of the Motor Accidents Claims Tribunal-cum-V Additional District Judge (FTC), Ogole, dated 28-02-2007 in O.P.No.297 of 2004 preferred this appeal besides other grounds on the ground that the insurer is not liable to pay any compensation in respect of death or injury caused to the passengers in goods vehicle that the Tribunal erroneously ordered pay and recover. Further contended that the presence of the deceased in the goods vehicle as unauthorized passenger, but not as authorized agent or representative of the owner of the goods, thereby the 5th respondent has violated the terms and conditions of Ex.B1-policy and the Tribunal erred in ordering the appellant to pay the compensation.

2. The brief facts of the case are as follows:-

The respondents 1 to 4 filed the main claim petition stating that on 02-03-2004, the deceased who was working as Supervisor-cum-Operator in Sree Vishnu Sai Milk Line, Kanigiri. After loading the milk from the village in the vehicle bearing No.AP 7X 9141, started to Sri Venkata Krishna Sai Dairy in Jarugumalli to unload the same and while proceeding the vehicle on Kanigiri to Kandukur Road with high speed as the buffaloes were crossing the road near Peda Alavalapadu village, the driver applied sudden brakes as a result, the vehicle turned turtle and the deceased, who was sitting in the cabin, received severe head injury and died on the spot.

3. On behalf of the claimants, P.Ws.1 & 2 were examined and Exs.A1 to A6 were marked. On behalf of the respondents, R.W.1 was examined and Ex.B1 was marked.

4. The only contention of the appellant-Insurance Company is that the Tribunal erred in ordering pay and recover having held that the first respondent, the owner of the offending vehicle liable to pay the compensation.

5. Admittedly, P.W.2 is running a private dairy in the name and style of Sri Vishunu Sai Milk Line, Kanigir, which commenced in the month of August, 2003. Daily he collects 2,500 liters of milk per day from Doddichintalla and Sitaramapuram, which are at the distance of 35 kms from Kanigiri. His further evidence is that Venkata Krishna Reddy was working in his dairy as Supervisor-cum-Lab Assistant from 08-10-2003 to 02-3-2004. His specific evidence is that the deceased was traveling in their lorry to Jarugumilli of G. Venkata Krishna Sai Dairy, where he would process the fat contents, return back with empty cans and he died while on duty. P.W.2 denied the suggestion that the deceased was working only as milk collector, but not as deposed by P.W.1 in the chief examination and on that day, he was traveling as a passenger, there is no rebuttal evidence to P.W.2. R.W.1 is only an Administrative Officer, who speaks about Ex.B1-policy and he is not a direct witness to the accident. The Tribunal, having considered that the offending vehicle had licence to carry the goods and since the owner of lorry allowed the driver and caused the accident, resulting death of the deceased and find that in view of Ex.B1-policy, the Insurance Company cannot escape from the liability and the policy is in force. According to the Insurance Company, pay the compensation and recover the same as if it is a decree.

6. With regard to the income, the Tribunal considered Ex.A1, the salary certificate issued by P.W.2 and it is proved by the evidence of P.W.2. P.W.2 clearly stated that Ex.A6-salary certificate is being issued basing on the account books relates to the dairy. Basing on which, the Tribunal considered that the evidence of P.W.2 and Ex.A6-salary certificate proved the salary of the deceased at the time of accident is Rs.25,000/-. Further since the deceased at the time of accident was 30 years, applied multiplier '17' applying the decision of the Hon'ble Supreme Court reported in **Sarla Verma vs. Delhi Transport Corporation[1].**

7. In the facts and circumstances stated above, the Tribunal having considered both oral and documentary evidence on record, came to the right conclusion that the accident was due to rash and negligent driving of the driver of the offending vehicle bearing No.AP 7X 9141 and the driver is responsible for the accident, the first respondent is liable to pay the compensation. By virtue of Ex.B1-policy by which the second respondent has to indemnify the liability of the first respondent and accordingly, the Tribunal, having point No.3, partly allowed with costs as follows:-

> *"By awarding a sum of Rs.4,76,136/- to the petitioners 1 to 4 against both the respondents 1 to 2 jointly and severally with an interest at 7.5% per annum from the date of petition till the date of deposit or realization. Time for deposit is 30 days."*

8. It is only on point No.2, the Tribunal held in terms as far as the liability of second respondent is concerned, the Court considers that notwithstanding act of the lorry had licence to carry the goods, since the owner of the lorry allowed the driver and caused the accident, the deceased died, the petition filed by the petitioners under Section 166

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[1] (2009 ACJ 1298 (SC))

of the M.V Act. Therefore, the Insurance Company can not escape from the liability when the policy is in force. I hold that the Insurance Company pay the compensation to the petitioners at the first instance and recover the same from the owner of the accident vehicle without filing a suit, but by filing an Execution Petition. I hold that R2 is liable to pay the compensation to the petitioners.

9. The points 1 to 3 answered by the Tribunal goes to suggest that the presence of the deceased on the offending vehicle as on the date of accident was an agent of P.W.2 and on that day, the deceased was travelling in the offending vehicle to Jarugumalli of Sree Venkata Krishna Sai Dairy, where he would process to fat contents and return back with empty cans. Accordingly, the presence of the deceased on the offending vehicle on the date of the accident was an agent of P.W.2, but not as a passenger. Since the accident is caused due to the negligence of the driver of the vehicle, who was working under first respondent, the first respondent is liable to pay the compensation. Under Point No.2, the Tribunal held "*as for the liability of the second respondent is concerned, the Court considers that notwithstanding act of the lorry had licence to carry the goods, since the owner of the lorry allowed the driver and caused the accident*". Therefore, the insurance company cannot escape from the liability and the policy is in force and ultimately under Point No.3 to what relief the Tribunal held that the respondents are jointly and liable to pay the compensation with an interest at 7.5% per annum from the date of the petition till the date of deposit and time for deposit is 30 days and accordingly, apportioned the compensation among the claimants.

10. The whole reading of the award goes to suggest that the respondents 1 & 2 including appellant are jointly and severally liable to pay the compensation. The Tribunal loosely used the words that the insurance company can pay the compensation to the petitioners at the first instance and recover the same from the owner of the vehicle without filing a suit, but by filing an Execution Petition and in continuation held that respondent No.2 is liable to pay the compensation to the petitioners. Therefore, the respondents 1 & 2 are jointly and severally liable to pay the compensation. There is no clear finding that the owner violated any terms and conditions of the policy. Hence I find that R1 & R2 are jointly and severally liable to pay the compensation.

11. In view of the facts and circumstances, I find that the award do not suffer with any legal infirmities warrants interference.

12. Accordingly, the appeal fails and it is dismissed with costs while confirming the judgment and award dated 28-02-2007, passed in O.P.No.297 of 2004 on the file of Motor Accidents Claims Tribunal-cum-V Additional District Judge (FTC), Ongole.

13. Advocate fee is fixed at Rs.2,000/-.

14. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No costs.

JUSTICE N. BALAYOGI

Date: -06-2017.
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