HON'BLE SRI JUSTICE M.S.K.JAISWAL

M.A.C.M.A.No.1036 of 2010

JUDGMENT:

This appeal is filed by the insurance company – 3rd respondent in M.V.O.P.No.1642 of 2006, against the award dated 09.03.2010 passed by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Visakhapatnam.

The respondents/claimants filed the claim petition claiming a compensation of Rs.2,00,000/- on account of death of one Munagada Ramanamma, who died in a motor accident that occurred on 23.05.2006. The claimants are the husband and two sons of the deceased.

The brief facts of the case is that on 23.05.2006 at 2 p.m. the deceased Munagada Ramanamma along with her family members, viz., Munagada Yellarao, Mangamma, 4 months grand child, two and half years aged daughter and 14 years aged Chinni Kumari boarded an Auto, bearing registration No.AP31Y-926 at Ratnalapalem village to go to K.D.Peta and when the Auto reached Narsipatnam, the driver of the Auto drove it at high speed in a rash and negligent manner, due to which, the Auto turned turtle at R & B Bungalow on the left side of the road, as a result, the 4 months kid died on the spot and others sustained grievous injuries. The deceased succumbed to injuries at Area Hospital, Narsipatnam. The deceased was aged about 40 years, she was hale and health by the time of accident, she was doing agricultural coolie works and earning Rs.3,000/- per month.

The appellant/Insurance Company filed the counter denying the averments of the claim petition and its liability. It is further contended that the driver of the Auto had no valid licence at the time of accident and that the owner of the offending vehicle had violated the terms and conditions of the policy by entrusting the vehicle to a person who was not having any valid licence to drive the Auto.

On behalf of the claimants, P.Ws.1 & 2 were examined and got marked Exs.A.1 to A.6. On behalf of the respondents in MVOP, RWs.1 & 2 were examined and Exs.B1 to B5 were marked.

The Tribunal, on consideration of the oral and documentary evidence, has awarded compensation of Rs.1,67,000/- as against the claim of Rs.2,00,000/-. Questioning the said award, the appellant-Insurance Company filed this appeal.

Learned counsel for the appellant submits that the driver had no driving licence and this fact is evident from the fact that even though the driver has been examined as a witness on 28.01.2010 though the accident took place on 23.05.2006 he could not produce the licence or any details thereof. It is further submitted that the driver may stated that he lost the licence but no details were given. Apparently, if the driver had no driving licence, the insurance company cannot liable to pay compensation.

On behalf of the claimants, it is submitted that it is a case where the accident took place and the death of the deceased is not denied. So also, the finding of the fact that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and therefore, the claimants being third parties cannot be denied the compensation since the policy was subsisting as on the date when the accident took place.

The fact that the accident having taken place on the date, time and place as contended is not denied. So also the fact that in the accident the deceased who was travelling in the vehicle died in addition to the death of another kid and injuries to another person. If the evidence of R.W.2, who is the driver of the offending vehicle, is perused, it is apparent that he could not give satisfactory reasons for non-production of the driving licence though he claims that he lost it. The accident took place on 23.05.2006 and he was giving evidence as R.W.2 on 28.01.2010. Therefore, if really he had licence or he lost it, he would have produced some further material in support of his contention that he had driving licence when the accident took place.

However, as stated above, out of the same accident, two O.Ps. arose. In the present O.P., the claim is for the death of the deceased, whereas for the injuries sustained by P.W.2 herein M.V.O.P.No.1644 of 2006 was filed which was disposed of by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Visakhapatnam on the same day as on 09.03.2010. Against the said judgment, the Insurance Company preferred M.A.C.M.A.No.1549 of 2010 on the file of this Court. This Court vide judgment dated 14.02.2017 in M.A.C.M.A.No.1549 of 2010 held that the insurance company cannot deny its liability to indemnify the insured for the reason that the claimants are third parties and therefore, while partly allowing the appeal directing the insurance company to pay the amount at the first instance and recover the same from the driver and owner of the vehicle.

In view of the above, since the same material is there before this Court, the present appeal is also allowed in part by directing the appellant-Insurance Company to deposit the amount at the first instance within a period of two months from the date of this order and can recover the same from the driver and owner of the vehicle i.e., respondent Nos.3 and 4.

M.S.K.JAISWAL, J

Date: 1st August, 2017
Dsr/ssp