

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No.641 of 2005

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellants/petitioners challenging the order and decree dated 20.12.2004 in O.P.No.411 of 1998 passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Mahabubnagar District (for brevity "the Tribunal"), allowing the O.P. by granting compensation of Rs.2,00,000/- as prayed for, recoverable from respondent No.1 – owner of the offending lorry alone, together with interest @ 9% per annum from the date of the petition till realization.

2. Appellants are the petitioners and respondent Nos.1 and 2 are owner and insurer, respectively, of the offending lorry bearing No.AAA/58.

3. This appeal is filed mainly challenging exoneration of liability of the 2nd respondent – National Insurance Company Limited (insurer) by the Tribunal and seeking a direction to the insurer to pay compensation to the appellants, at the first instance, and recover the same from the 1st respondent – owner of the offending lorry.

4. The brief facts of the case are that the appellants have filed the above O.P. under Section 166(i)(c) of the Act claiming compensation of Rs.2,00,000/- on account of death of one Bola Narayana, who is the husband of appellant No.1; father of appellant Nos.2 to 6; and son of appellant Nos.7 and 8, in a motor vehicle accident that occurred on 12.04.1998, while travelling in lorry bearing No.AAA/58. The deceased was aged 35 years by the date of accident and earning Rs.1,500/- per month and in view of his death, his legal representatives have filed the aforesaid claim petition against respondent Nos.1 and 2.

5. Before the Tribunal, 1st respondent – owner of the offending lorry remained exparte and 2nd respondent – insurer alone contested the claim petition by filing counter denying its liability and contended that the claim of the appellants is highly excessive. The Tribunal, on a consideration of the evidence and the material available on record, vide order and decree dated 20.12.2004, allowed O.P.No.411 of 1998 awarding compensation of Rs.2,00,000/-, as prayed for, with appropriate apportionment among the claim petitioners, however, fixing the liability of payment of compensation on respondent No.1 – owner of the offending lorry alone, while exonerating the 2nd respondent – insurer from the said liability. Aggrieved by the same, the appellants have filed the present appeal.

6. Learned counsel for the appellants submits that the deceased was travelling in the offending lorry bearing No.AAA/58 along with Jowar bags and Rice bags on the date of accident i.e., on 12.04.1998 as owner of the goods and, therefore, the 2nd respondent – insurer is liable to pay compensation under Section 147 of the Act.

7. On the other hand, learned Standing Counsel for the 2nd respondent – insurer submits that there is no evidence on record to show that the deceased was travelling as owner of the goods and, therefore, the insurer is not liable to pay compensation to the appellants.

8. Heard learned counsel for the respective parties and perused the material available on record, including the impugned order dated 20.12.2004.

9. Now, the point for consideration is, whether the liability of the 2nd respondent – insurer is proved and, if so, whether the insurer may be directed to pay the compensation to the appellants, at the first instance, and recover the same from the 1st respondent – owner of the offending lorry.

10. Learned counsel for the appellants submits that as per Section 147 of the Act, which deals with the requirements of policies and limits of liability, the 2nd respondent – insurer is

liable to pay compensation to the owner of the goods, in view of Act 54 of 1994.

11. In this regard, sub-clause (i) of sub-Section (1)(b) of Section 147 of the Act, which is relevant, reads as under:

“(a)

(b)

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;”

12. The Tribunal on consideration of evidence of P.W.1 and relying on the documents Ex.A.1 – Copy of FIR lodged by P.W.2, who was an eye-witness to the accident, who travelled in the crime vehicle, and also on consideration of Ex.A.2 – Copy of Charge Sheet, Ex.A.3 – Copy of PME Report, came to the conclusion that the deceased travelled in the crime lorry along with 3 bags of Jowar and 5 bags of Rice, however, the deceased was not considered as owner of the goods by the Tribunal, as the lorry was not fully engaged by him for carrying on his goods. It is pertinent to note that the deceased is said to have travelled along with 3 bags of Jowar and 5 bags of Rice, for which the lorry cannot be fully engaged. Therefore, the Tribunal has rightly concluded that the deceased has not travelled as owner of the goods in the vehicle and he travelled only as a passenger in the vehicle.

There is no coverage of insurance for a passenger, who travelled in a goods vehicle. Therefore, the Tribunal has rightly rejected the contention of the appellants-petitioners with regard to the liability of the insurer to pay compensation. As a matter of fact, Ex.B.1 is the comprehensive policy of insurance of the crime vehicle. One of the terms of the policy was that the policy does not cover use of the vehicle for carrying on passengers, except the passengers other than the driver and passengers not exceeding 6, in number, covering under the provisions of the Workmen's Compensation Act, 1923. It is pertinent to note that the deceased was not an employee of the owner of the vehicle. It is also obvious that the deceased travelled as a passenger in a goods vehicle, for whom there is no coverage. Therefore, the Tribunal has rightly held that the insurer is not liable to pay compensation and the owner alone is liable to pay compensation.

13. In view of the foregoing reasons, the Civil Miscellaneous Appeal is dismissed. No order as to costs.

14. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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