THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 1377 OF 2007

JUDGMENT:

The National Insurance Company which has been arrayed as respondent No. 3 in OP No. 446 of 2003 has come up with this appeal disputing its liability to pay compensation amount to the claimant by urging the following grounds.

First and foremost contention of the appellant-insurance company is that the claimant travelled as an unauthorized passenger in the vehicle belonging to the respondent No.2-N. Raghavulu who is the owner of the van bearing No. AP 5X 1479. The second contention of the insurance company is that the insurance policy does not cover the risk of passengers. Since the claimant travelled as an unauthorized passenger in a goods vehicle, he is not entitled to get any compensation from the appellant-insurance company. The third ground pleaded by the appellant-insurance company to disown its liability is that the claimant due to his own negligence contributed for the occurrence of accident by traveling on the top of the load carried by the van.

The claimant in OP No. 446 of 2003 laid the claim as against the appellant-insurance company and others before the Tribunal for a sum of Rs.75,000/- for the injuries sustained by him in the accident dated 24.7.1999. His specific case was that on 24.7.1999 at about 10.00 A.M. while he was proceeding in the van bearing No. AP 5X 1479 along with five other coolies with the load of banana bunches for the purpose of unloading them, he received injuries in the accident that was caused to the van by its driver because of rash and negligent driving of it by him. In the abovementioned accident himself and other coolies who travelled along with him sustained injuries. Immediately after the accident he was taken to Community Health

Centre, Yeleswaram and from there to the Government Hospital, Kakinada and there he was treated as an inpatient upto 20.9.1999. In the abovementioned accident he sustained grievous injuries especially on his face and there was damage to his tooth. He incurred the expenditure of Rs.20,000/- towards treatment and that he could not attend to cooli work on account of the aforesaid injuries.

The Tribunal, on appreciation of the oral evidence adduced by the claimant and the documents produced by him, had recorded the finding that the accident occurred on account of the rash and negligent driving of the van bearing No. AP 5X 1479 by its driver. The insurance company had not disputed the occurrence of the accident. It had not raised any plea disputing the negligence on the part of the driver of the van. It had taken the stand that the claimant himself contributed for the occurrence of the accident by sitting on the load of banana bunches. But the aforementioned contention of the insurance company was not substantially proved by adducing oral or documentary evidence. The Tribunal, on appreciation of the evidence given by the claimant, which was corroborated by Exs.A1 to A4-copies of FIR, wound certificate, Motor Vehicle Inspector's report and charge sheet respectively, came to the conclusion that the accident dated 24.7.1999 occurred due to the rash and negligent driving of the van bearing No. AP 5X 1479 by its driver. In Ex.A1-FIR it was recited that the claimant and other injured travelled as coolies. The evidence given by the claimant and also the documents produced by him clinchingly establishes the fact that himself and other injured were engaged as coolies and thus there cannot be any hesitation to hold that the said contention raised by the appellant-insurance company that the claimant travelled as an unauthorized passenger is contrary to the evidence available in the case record. The appellant-insurance company has not examined any witness to prove its contention that the claimant himself contributed for the occurrence of the accident by sitting on the load of banana bunches. Since no evidence whatsoever is there in the case record to hold that it was due to the negligence of the claimant, he fell down and sustained injuries, the finding given by the Tribunal that negligence on the part of the driver of the van is proved, cannot be faulted.

Coming to the reasonableness or otherwise of the quantum of compensation awarded by the Tribunal is concerned, the claimant, apart from examining himself as P.W.1, produced his wound certificate-Ex.A2 wherein it was mentioned that he sustained one simple injury and one grievous injury for which he was treated. Since no substantial evidence was adduced by the claimant establishing his contention that he could not attend to cooli work and there was loss of income etc. and regarding his admission as an in-patient in the Government Hospital at Kakinada as contended by him, the Tribunal had awarded compensation of Rs.21,600/- and the same, in the opinion of this Court is just and reasonable.

Since the appellant-insurance had not adduced any evidence of any nature to establish its contention that the claimant travelled as an unauthorized passenger and that the insurance policy conditions were breached by respondents 1 and 2 in OP by allowing the claimant to travel as an unauthorized passenger and that due to own negligence of the claimant himself, he fell down and received injuries, this Court is not inclined to dissent from the view taken by the Tribunal in fastening the liability of payment of compensation as against the appellant herein.

The learned Standing Counsel appearing for the appellant-insurance company states that the contention that the insurance policy obtained for the crime vehicle does not cover the risk of coolies. If that be the contention of the insurance company, it is always open for it to recover the compensation amount, if any paid, by initiating necessary steps in this regard by fulfilling the required formalities.

For the reasons mentioned above, the appeal fails and it is accordingly dismissed. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt.15.9.2017
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