HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1947 OF 2006

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the appellant-insurer, aggrieved by the order dated 05.07.2005, passed in M.A.T.O.P. No.528 of 2000, by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-II Additional District and Sessions Judge (Fast Track Court-I) Khammam (for short, 'the Tribunal'); wherein the Tribunal awarded the compensation claimed of Rs.2,50,000/-, with interest at the rate of 7.5% p.a. from the date of petition till realization, making Respondents 1 to 3 jointly and severally liable to pay the compensation, however, directed the appellant-insurer to first pay the compensation awarded to the petitioners and then recover it from the 2nd respondent, owner of the tractor and trailer bearing registration Nos.APH-3605 and AAK 962 (for short, 'the crime vehicle').

2. Appellant herein is the 3rd respondent, insurer of the crime vehicle; 6th respondent herein is the 1st respondent, driver; 7th respondent herein is the 2nd respondent, owner of the crime vehicle, and Respondents 1 to 5 herein are the claim petitioners, who filed the petition before the Tribunal, under Section 166 of the Act, claiming compensation of Rs.2,50,000/- on account of the death of Bhukya Ramdas (hereinafter referred to as 'the deceased'), who happened to be the husband of 1st petitioner, father of minor petitioners 2 to 4 and son of 5th petitioner, in a motor vehicle accident occurred on 27.03.1999.

3. The parties hereinafter are referred to as arrayed before the Tribunal.

4. The case of the petitioners, in brief, is that on 26.03.1999, when the deceased hired the crime vehicle to transport food articles, utensils and tent material from Ammapalem village to Penuganchiprolu village to perform Annadhanam programme at Thirupathamma temple, and after the function, when he along with his family members and others was returning from Penuganchiprolu, on 27.03.1999 at about 05:30 p.m., 1st respondent, driver of the crime vehicle, drove the same at high speed and lost control over it, as a result of which, it turned turtle into a canal in between Chinagopathi and Anantharam villages; as a result of which, the deceased received fatal injuries and died on the spot. A case in Crime No.26 of 1999 for the offence punishable under Section 304-A I.P.C. was registered against driver of the crime vehicle. The petitioners averred in the petition that the deceased was aged 28 years, earning Rs.3,000/- per month from agriculture and by attending other coolie works and, due to the accident, they lost the sole bread winner, sought Rs.2,50,000/- as compensation from respondent Nos.1 to 3, who are the driver, owner and insurer of the crime vehicle.

5. Respondent No.1, driver of the crime vehicle, remained *ex parte* before the Tribunal.

6. Respondent Nos.2 and 3, owner and insurer of the crime vehicle, filed separate counters before the Tribunal, denying all the allegations mentioned in the claim petition. Respondent No.2 contended that the crime vehicle was insured with 3rd respondent as on the date of accident, even if any compensation is payable, 3rd respondent alone is liable to pay the compensation. Whereas 3rd respondent, insurer, contended that as the driver of the crime vehicle was not holding valid driving licence, it is not liable to pay any compensation to the petitioners and, finally, prayed to dismiss the petition.

7. The Tribunal, after framing the issues and, considering the evidence of P.W.1 and R.W.1, and the documents Exs.A.1 to A.4 and Ex.B.1, granted compensation of Rs.2,50,000/- with interest at the rate of 7.5% per annum from the date of petition till realisation, making respondent Nos.1 to 3 jointly and severally liable to pay the compensation, apportioned the same equally among petitioner Nos.1 to 5, and further relying on the decisions of Apex Court in ***Oriental Insurance Vs. Nanjappan and others***[1], ***New India Assurance Company Vs. Satpal Singh and others***[2] and ***New India Assurance Company Limited Vs. Baljit Kaur***[3] directed the 3rd respondent-insurer to first pay the awarded compensation to the petitioners and then recover it from 2nd respondent-owner. Aggrieved by the said direction, appellant-insurer preferred the present appeal.

8. Heard the learned standing counsel for the appellant-insurer and the learned counsel appearing on behalf of respondents-claim petitioners and perused the material available on record. Though served with notice, none entered appearance on behalf of the 6th respondent, driver of the crime vehicle. The appeal against the 7th respondent, owner of the crime vehicle, was dismissed for default *vide* order of this Court on 04.07.2016.

9. Learned standing counsel appearing on behalf of the appellant-insurer submitted that when the deceased was travelling by the crime vehicle on the date of accident *i.e.,* on 27.03.1999, met with an accident and died on the spot. Ex.B-1 is copy of the insurance policy of the crime vehicle, which is a goods carrying vehicle. The deceased was not the owner of the goods; he ought not to have boarded the crime vehicle as he had hired it only to transport food articles, utensils and tent material to

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[1] 2004 ACJ 721
[2] AIR 2000 SC 235
[3] 2004 ACJ 228

perform annadanam at Tirupathamma temple; there is violation of terms and conditions of insurance policy. There is ample evidence to prove the same. Hence, the Tribunal ought not to have directed the appellant-3rd respondent to first pay the compensation awarded to the claim petitioners and later to recover it from the 2nd respondent, owner of the crime vehicle. Learned counsel for the appellant-insurer did not raise any serious dispute with regard to the rash and negligent driving of the driver of the crime vehicle, and the quantum of compensation awarded to the petitioners, but prayed to allow the Appeal, setting-aside the direction, in so far as pay and recover from the appellant-insurer, is concerned.

10. On the other hand, learned counsel appearing on behalf of the respondents-claim petitioners contended that the deceased hired the crime vehicle and travelled as owner of goods, as such there is no violation of terms and conditions of the insurance policy; the Tribunal had rightly awarded the compensation and tagged the liability against the respondents; there is no infirmity and further contended that there is justification on the part of the Tribunal in directing the 3rd respondent-insurer to first pay the compensation awarded to the claim petitioners and, later, recover it from the 2nd respondent, owner of the crime vehicle. There is no infirmity in the order under Appeal and, ultimately, prayed to dismiss the Appeal with costs.

11. In view of the rival contentions, raised on behalf of both the counsel, the following points have come up for determination:

1) Whether the impugned order suffers from any illegality?

2) If so, the direction, with regard to pay and recover against the appellant-3rd respondent, is liable to be set-aside?

12. **POINT Nos.1 and 2**: Both the points go together. Admittedly, there is no contest with regard to driving of the crime vehicle by its driver at high speed, in a rash and negligent manner, and causing the death of deceased. There is ample evidence to show the same, particularly, the evidence of P.W.1 and the documents marked as Exs.A-1 - certified copy of F.I.R.; Ex.A-2 - certified copy of charge sheet; Ex.A-3 - certified copy of Motor Vehicle Inspector's Report and Ex.A-4 - certified copy of post-mortem examination certificate of the deceased. Therefore, it can be safely concluded that the deceased died due to rash and negligent driving of the driver of the crime vehicle. The Tribunal had taken the age, income of the deceased and the dependency of the claim petitioners on the deceased and, ultimately, awarded a compensation of Rs.2,50,000/-, which finding is based on evidence on record; there is nothing to take a different view, the same is liable to be confirmed.

13. The main submission put forth by the learned standing counsel appearing o behalf of the appellant-insurer is that there is violation of terms and conditions of policy, marked as Ex.B-1, by respondents 1 and 2, driver and owner of the crime vehicle; the deceased was not the owner of the goods. The Tribunal erroneously tagged the liability to pay and recover against the appellant, relying on the decision of the Apex Court in ***Nanjappan***[1], ***Satpal Singh***[2] and ***Baljit Kaur***[3]; instead, it ought to have directed that the 2nd respondent-owner alone is liable to pay the compensation.

14. Admittedly, as per Ex.B-1, copy of insurance policy, and the evidence of R.W.1, who was an official from the office of the 3rd respondent-insurer, the tractor and trailer bearing registration Nos.APH-3605 and AAK-962 is a goods vehicle, passengers cannot be permitted to travel by it. However, respondent Nos.1 and 2, who are the driver and

owner of the crime vehicle, flouting the terms and conditions of Ex.B-1, insurance policy, permitted the deceased to travel by the crime vehicle. So the appellant-3rd respondent, who is insurer of the crime vehicle is not liable to pay any compensation to the claim petitioenrs, relied on the decisions of the Apex Court in ***National Insurance Company Limited Vs. Bommithi Subbhayamma and others***[4], ***M.V. Jayadevappa and others Vs. Oriental Fire and General Insurance Company Limited***[5], ***National insurance Company Limited Vs. Savitri Devi and others***[6] and ***New India Assurance Company Limited Vs. Asha Rani and others***[7], wherein the Apex Court overruled the law laid down earlier in ***Satpal Singh***[2] and held that insurer of goods vehicle is not entitled to pay first the compensation awarded to the claim petitioners and then recover it from the respondent-owner. The finding of the Tribunal against the 3rd respondent-appellant, with regard to payment of the compensation first to the claim petitioners and then recover it from the 2nd respondent-owner of the crime vehicle, is unsustainable, in view of the settled law laid down by the Apex Court *supra*, and as such the said direction is liable to be set-aside.

15. As could be seen from the proceeding sheet on record, this Court on 14.09.2006, while admitting the Appeal, directed the appellant-insurer to deposit half of the compensation amount awarded by the Tribunal with proportionate costs and interest; even by the very order, claim petitioners 1 and 5 were only permitted to withdraw their respective share of compensation amount of Rs.25,000/- each and the balance amount was directed to be kept in a fixed deposit, in any nationalized bank, for a period of three years. Therefore, to the extent of amount withdrawn by the claim

[4] 2005 ACJ 721 (SC)
[5] 2005 (2) TAC 5 (SC)
[6] 2013 (11) SCC 554
[7] 2003 (2) SCC 223

petitioners 1 and 5, if any, the appellant is at liberty to recover the same from the 2nd respondent, owner of the crime vehicle, but not from the claim petitioners. The remaining amount, which was deposited by the appellant-3rd respondent-insurer and, lying to the credit of the M.A.T.O.P. No.528 of 2000, the appellant-3rd respondent-insurer is at liberty to withdraw the same. The claim petitioners are at liberty to recover the compensation amount due in M.A.T.O.P. No.528 of 2000 directly from the 2nd respondent, owner of crime vehicle.

16. Accordingly, with the above direction, the appeal is allowed setting aside the order and decree under challenge to the extent of direction, against the appellant-3rd respondent to initially pay and recover the same from the 2nd respondent-owner of the crime vehicle, while confirming the order and decree under challenge in all other aspects.

17. As a sequel, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 07.04.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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