HONORUABLE SRI JUSTICE N. BALAYOGI

M.A..C.M.A. No. 2113 OF 2009

JUDGMENT:

1. The appellant/claimant, aggrieved by the Award dated 24.10.2007 in OP.No. 2288 of 2005 passed by the learned X Additional Chief Judge, Fast Track Court, City Civil Courts, Hyderabad, preferred the present appeal on the ground that the burden lies on the second respondent-Insurance company to prove that the insurance policy filed by him is fake; that no complaint was lodged by the first respondent-owner of the vehicle regarding issuance of fake insurance policy, and that the Tribunal ought to have granted full amount of compensation instead of restricting it to Rs.1.32,000/-.

2. On the other hand it is mainly contended by learned Standing Counsel appearing on behalf of the second respondent-United India Insurance Company Limited that the insurance policy bearing No.149614104 is a fake policy. He further contends that the compensation awarded by the Tribunal is just and reasonable, that the impugned award does not suffer from any legal infirmities and it does not warrant interference by this Court.

3. The consistent evidence of P.W.1-claimant is that the offending vehicle-Auto bearing registration No. AP 13V 8762 was insured with the second respondent and in the cause title of the claim petition itself, the claimant has mentioned policy No. 149614104 and address of Branch Office of the second

respondent as New Nallakunta, Hyderabad. Ex.A.4–MVI report clinches the issue that the Motor Vehicle Inspector inspected the offending vehicle on 25.08.2005 at 03.00 PM, at Police Station, Samshabad and clearly noted the name of its owner–Smt.Rehana Begum against Column No. 16 (a), and also noted particulars of Policy No. 149614104, name of the Insurance company as United Insurance Company Limited and date of expiry of policy as 02.09.2005 against Column No. 14-A. However, the copy of the said insurance policy was not marked, but it was enclosed along with charge sheet, Ex.A.5 and filed into the Tribunal.

4. The Administrative Officer of the second respondent was examined as R.W.1. In his evidence, he stated that they never issued any policy in respect of the alleged offending vehicle. He further deposed in the evidence that the policy filed as Ex.A.8 is an out and out a fake policy. In fact as already stated hereinabove, the copy of policy was not marked.

5. The further evidence of R.W.1 is that the second respondent-United India Insurance Company Limited does not have any branch or other office at Nallakunta, but Ex.A.8 bears a self made rubber stamp showing its company's branch office at Nallakunta, which appears to be a cover note. He further deposed that in fact their Company stopped issuing Cover Notes from the year 2003. However, he could not produce any document in support of the same. When the claimant gave Policy bearing

No.149614104 and its validity period in the claim petition itself, the burden heavily lies on the respondents 1 and 2 who are concerned and connected to the said policy to produce and prove that it is a fake policy and that no such policy/cover note was issued by the second respondent's branch office at New Nallakunta. But they failed to do so.

6. The Insurance Policy/Cover Note filed into the Court along with Charge Sheet-Ex.A.5 bears the seal of the second respondent branch office, New Nallakunta. It also bears Number as 149614104, indicate its validity upto 02.09.2005 and bearing registration No. AP 13V 8762 of the offending vehicle. The first respondent, owner of the offending vehicle having received notice, remained ex parte. He neither produced any evidence nor the policy of the offending vehicle into the Court. The second respondent which issued policy in respect of the offending vehicle would certainly have a copy of the said policy and nothing prevents it from producing the same as rebuttal evidence to prove that the policy bearing No. 149614104 is a fake policy. Respondents 1 and 2 suppressed the fact by not producing the original/ copy of the policy having in possession of the same. Accordingly in the facts and circumstances noted hereinabove, I find that the Tribunal without proper consideration and appreciation of the evidence on record, came to an erroneous conclusion that there is clear discrepancy in respect of mentioning policy number in Xerox copy filed by the petitioner in respect of the

crime vehicle and the petitioner failed to discharge the liability in proving that first respondent vehicle was insured with the second respondent at the time of alleged accident. The Tribunal ignored the basic principle that burden lies on the second respondent who took the plea that copy of the policy filed in to the Court is a fake policy and the same was not issued by its Branch Office at New Nallakunta. Further, the second respondent soon after receiving notice in the claim petition should have issued notice to the first respondent calling upon her to produce a copy of the policy, copy of driving licence of the driver, permit, RC etc. There is no whisper in the evidence of D.W.1 as to issuance of any such notice to the first respondent, who is the owner of the vehicle. Accordingly the second respondent failed to comply with the legitimate duty cast upon it. In view thereof, the finding of the Tribunal that the vehicle of the first respondent was not insured with second respondent-Insurance Company and thereby absolving the liability of the second respondent from paying the compensation, is unsustainable.

7. The other contention of learned Counsel for the appellant is that the Tribunal ought to have granted full amount of compensation instead of restricting it to Rs.1,32,000/-.

8. The claimant, who is none other than the son of the deceased, Smt. Loka Bhoomamma, was examined as P.W.1. It is evident from his deposition that his mother was aged 50 years as

on the date of her death and used to earn Rs.3,000/- per month working as agricultural labour. There is no cross examination of P.W.1 with regard to the age and income of the deceased, Smt. Loka Bhoomamma. The evidence of DW.1 is also silent on the age and income of the deceased. Admittedly the claimant did not produce any document in poof of age, occupation and income of his late mother, Smt. Loka Bhoomamma. In Ex.A.1–FIR, age of the deceased was noted as 55 years. In Ex. A.2–Inquest Report, Ex.A.3–Post Mortem Report, and Ex. A.5-Charge Sheet, age of the deceased was noted as 55 years. In the absence of any rebuttal evidence to the evidence of P.W.1 and documentary evidence at Ex. A.1 to A.5, I considered it just and relevant to take the age of the deceased as on the date of her death as 55 years and was working as agricultural labour, earning Rs.3000/- per month. Accordingly, I assessed the annual income of the deceased as on the date of her death at Rs.36000/- (Rs. 3,000/- x 12). The deceased is having only one son, who is the claimant herein. If 1/3rd is deducted from the annual income of the deceased towards her personal and living expenses, the contribution to the claimant would be Rs.24,000/-. The appropriate multiplier for the age of 55 years of the deceased as indicated in KERALA STATE TRANSPORT COMPANY Vs. SUSAMMA THOMAS {(1994)2 SCC 176}, U.P.S.R.T.C. Vs. TRILOK CHANDRA {(1996) 4 SCC 362}, NEW INDIA ASSURANCE Co.Ltd. Vs. CHARLIE {(2005) 10 SCC 720} is ‘9’. If the same is applied, the loss of contribution would be Rs.2,16,000/- (Rs.24,000 x 9).

9. Having considered the age of the deceased, which was 55 years and working as agricultural labour and her life style, I further award a sum of Rs.10,000/- towards loss of estate, Rs.10,000/- towards consortium and a sum of Rs.2,500/- towards funeral expenses. In all, total compensation payable to the claimant would come to Rs.2,38,500/-.

10. The Apex Court in NAGAPPA Vs. GURUDAYAL SINGH { 2003 (1) ALD 1 (SC)} held that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant and in appropriate cases wherefrom the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal/Court may pass such award. In view of the aforesaid decision and having considered the evidence brought on record in the case on hand, the claimant is entitled to receive compensation of Rs.2,38,000/-.

11. In view of the Insurance Policy No.149614104, which was valid with effect from 03.09.2004 to 02.09-2005 and the accident occurred on 21.08.2005, by which date, the insurance policy was in force.

12. The first respondent being the owner of the offending auto bearing registration AP 13 V 8762, she is vicariously liable for the acts of her driver.

13. Further, by virtue of the said policy, the second respondent has to indemnify the liability of the first respondent. Accordingly, the first and second respondents are jointly and severally liable to pay the compensation.

14. In the result, the appeal is allowed and the Award dated 24.10.2007 passed in OP.No.2288 of 2005 by the learned X Additional chief Judge, Fast Track Court, City Civil Courts, Hyderabad is modified to the extent indicated hereinabove. Consequently, the first and second respondents are jointly and severally liable to pay the total compensation of Rs.2,38,500/- with existing bank interest at 7.5% per annum from the date of claim petition i.e. 8.9.2005 till the date of deposit of the awarded amount.

15. The respondents are directed to deposit the compensation amount, after deducting the amount, if any, already paid/ deposited within a period of thirty days from today.

16. On such deposit, the appellant/claimant is entitled to withdraw Rs.1,38,500/- without furnishing any security and

remaining amount of Rs.1,00,000/- shall be kept in fixed deposit in any nationalized bank.

17. The appeal is accordingly allowed, with costs.

18. Advocate fee is Rs.2,000/-.

19. Miscellaneous petitions pending consideration if any in the appeal stall stand closed in consequence.

JUSTICE N. BALAYOGI

DAT5ED 10th MARCH, 2017.

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