THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

MACMA No. 1902 of 2013

JUDGMENT:

This is an appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short, the Act) by the United India Insurance Company Limited, respondent Nos.2 and 3 in O.P.No.2 of 2008, aggrieved by the order and decree, dated 23.03.2009 in O.P.No.2 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge (III-FTC), Warangal at Mahabubabad (for short, the Tribunal).

2. O.P.No.2 of 2008 has been filed under Section 166(1)(c) of the Act by petitioner No.1, the wife, petitioner Nos.2 and 3, the minor son and the daughter and petitioner Nos.4 and 5, parents of the deceased, who died in a motor vehicle accident. They claimed compensation of Rs.8,28,000/- for the death of the deceased, but restricted their claim to Rs.5,00,000/-. The Tribunal, on consideration of the evidence, has awarded compensation of Rs.3,60,000/-. Aggrieved by the impugned order passed by the Tribunal, this appeal has been preferred by the appellant i.e., insurance company.

3. The points arise for consideration in this appeal are:

(i) Whether the compensation awarded by the Tribunal is excessive and exorbitant?

(ii) Whether there is coverage of insurance for the deceased?

(iii) Whether the driver of the motorcycle was having valid and effective driving licence and the vehicle involved in the accident was used for commercial purpose at the time of accident? And

(iv) Whether Ex.B.1 – insurance policy is a farmers' package policy?

4. Heard the arguments of learned counsel for the appellants Sri Ratnam, learned counsel for respondent Nos.1 to 5 Sri Prabhakar Rao and learned counsel for respondent No.6 Smt.Kongara Vijaya Lakshmi.

5. The brief facts of the case are that on 06.01.2007 early in the morning, the deceased was attending to his duties as driver on a tractor and trailor bearing No.AP04A 6710 & 6711 at J.R.S. Stone Mettle Industries, Balapur for loading the stones and dumping the same in the crusher. At about 6.00 am., while the deceased was dumping the stones into the crusher, all of a sudden, the tractor and trailor turned turtle, as a result of which, the deceased came under the tractor and trailor and the stones fell on the body of the deceased and he sustained grievous injuries, and on the way to hospital, he died. The deceased died during the course of employment working under respondent No.1. The claimants made claim against respondent Nos.1 to 3.

6. Respondent No.1 filed counter admitting that he is the owner of the tractor and trailor involved in the accident. It is stated that he has not engaged the driver for the said tractor at any point of time. It is further stated that he has leased out the said vehicle to J.R.S. Stone and Mettle Industries & Constructions and the deceased was employed in J.R. Constructions. The deceased was having valid driving licence, and the tractor was insured with respondent Nos.2 and 3. Therefore, the insurance company is only liable to pay compensation. Hence, he sought for dismissal of the petition against him.

7. Respondent Nos.2 and 3 filed written statement putting the claimants to strict proof of the age, occupation and income of the deceased. It is stated that the accident occurred not due to rash and negligent driving of the deceased and it occurred only due to fall of stones on the deceased. It is further stated that no additional premium was collected under the policy for covering of the risk of the driver, and the policy was farmers' package policy. The vehicle involved in the accident was engaged by J.R.S. Stone and Mettle Industries & Constructions for commercial purpose, as such, there is no valid coverage of policy. The claim of the claimants is excessive and exorbitant, and therefore, sought for dismissal of the petition.

8. The Tribunal, on consideration of the evidence of P.W.1, coupled with documents Exs.A.1, A.2 and A.4, held that the deceased died while driving the tractor and trailor bearing No.AP04A 6710 & 6711, and accordingly, awarded compensation of Rs.3,60,000/- with interest @ 7.5% per annum.

9. The contention of the appellants, insurance company, is that the driver of the crime vehicle was not possessing valid driving licence, and that there is no valid insurance coverage for the vehicle, as such, there was violation of conditions of insurance policy. It is also contended that insurance policy, Ex.B.1, is a farmers' package policy, but the vehicle was used for commercial purpose at the time of the accident, as such, there is no coverage of insurance policy.

10. It is also contended that no additional premium was paid for coverage of risk of the driver of the vehicle. It is the case of the appellants that the vehicle involved in the accident was engaged by J.R.S. Stone and Mettle Industries & Constructions for commercial purpose and the driver was not having valid driving licence, and hence, the insurance company is not liable to pay any compensation.

11. It is pertinent to note that the Tribunal has not framed any specific issue in respect of the above contentions. The Tribunal has framed only two issues, one in respect of rash and negligent act of the driver of the crime vehicle, and the other in respect of the entitlement of compensation by the respondents. On consideration of the evidence, the Tribunal held issue No.1 in favour of the claimants holding that the accident occurred due to rash and negligent driving of the driver of the tractor and trailor, and also held issue No.2 in favour of the claimants awarding compensation.

12. The Tribunal observed that the claimants have filed Xerox copy of driving licence of the deceased which was marked as Ex.A.5. Ex.A.5 indicates that the driver of the crime vehicle was having valid driving licence to drive the tractor

and trailor as on the date of accident. This clearly shows that the driver of the crime vehicle was having valid and driving licence by the date of the accident. There is no rebuttal evidence adduced by the respondents to disprove that the driver of the crime vehicle was not possessing valid driving licence by the date of accident.

13. Ex.B.1 is the farmers' package policy. It shows that no premium was paid to cover the risk of the driver. It is the finding of the Tribunal that Ex.B.1 is not covering the risk of the driver, as no premium was paid by respondent No.1, and therefore, liability cannot be fastened to respondent Nos.2 and 3, o order "pay and recovery".

14. It is an admitted fact that the accident occurred out of the use of a motor vehicle in a public place. The rash and negligent act on the part of the driver of the crime vehicle is proved. The owner and the insurer are vicariously liable on account of the negligent act of the driver of the crime vehicle. There is valid coverage of insurance policy, though it is contended that it was a farmers' package policy. The only dispute is that though there is valid "farmers' package policy", as the vehicle was used for commercial purpose, it is breach of terms and conditions of the said policy.

15. In the light of the decision of the Hon'ble Supreme Court in S.Iyyapan v. United India Insurance Co. Ltd.[1], when a driver is having a licence to drive light motor vehicle, and if he drives a commercial vehicle, and merely because there is no endorsement on the light motor vehicle licence, the liability of the insurer cannot be exonerated.

16. In view of the facts and circumstances of this case, and keeping in view the ratio laid down in S.Iyyapan's case (supra), this is a fit case where pay and

[1] (2013) 7 SCC 62

recovery can be ordered. Therefore, there are no valid grounds to interfere with the findings of the Tribunal to set aside the award.

16. In the result, the appeal is dismissed. The award passed by the Tribunal in O.P.No.2 of 2008 is confirmed. No costs. Miscellaneous petitions pending, if any, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

Date: 12.04.2017
SKMR/TJMR

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

MACMA No. 1902 of 2013

Date: .04.2017