THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO.1793 OF 2007

JUDGMENT:

Aggrieved by the order dated 10.5.2007 passed by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-Prl. District Judge, Medak at Sangareddy in OP No. 863 of 2005, the present appeal is filed by the 2nd respondent therein i.e., New India Assurance Company Limited.

The parties will herein be referred to as they are arrayed in the aforementioned OP.

The facts of the case are briefly stated as under,

The petitioners are the wife and sons of the deceased Mandula Durgaiah who died in the accident dated 18.10.2005. Their case is that on 18.10.2005 at about 7.00 P.M. while the deceased Durgaiah was proceeding by walk near Government Junior College, Sangareddy, an auto bearing No. AP-23-V-3629 which was driven by its driver in a rash and negligent manner with high speed gave a hit to him, as the result of it, he received grievous injuries over his head and on other vital parts of his body and succumbed to the said injuries while he was undergoing treatment in Yashoda Hospital, Somajiguda, Hyderabad on 19.10.2005 at about 2.20 P.M. Police of Sangareddy Town police station registered a case in Cr.No. 109 of 2005 against the driver of the auto bearing No. AP-23-V-3629. The petitioners further submitted that the deceased was aged about 58 years by the date of his death and was working as a Superintendent in Government Hospital, District Medical and Health

Office, Medak at Sangareddy and was drawing monthly salary of Rs.20,000/- and was contributing his entire income for their maintenance. The petitioners, having lost the deceased on whom they were depending, laid the claim as against the respondents 1 and 2 who were the owner and insurer of auto bearing No. AP-23-V-3629 which was responsible for the occurrence of the aforementioned accident.

The claim made by the petitioners was contested by the owner and insurer of the offending auto by filing their respective counters.

The petitioners, to prove their case, examined P.Ws 1 to 3 and marked Exs.A1 to A8.

Relying on the oral testimony of P.W.2 which was supported by the documentary evidence on all aspects, the Tribunal held that the accident dated 18.10.2005 occurred due to the negligent driving of the auto bearing No. AP-23-V-3629 by its driver. The Tribunal, on close scrutiny of the evidence of P.W.3, the Administrative Officer of the Government Hospital, Sanga Reddy where the deceased was working as Superintendent by the date of his death, and the salary certificate wherefrom it was noticed that the deceased was drawing net salary of Rs.20,156/- per month, awarded compensation of Rs.5.14 lakhs in total. The insurance company did not raise any contention disputing the findings recorded by the Tribunal on the aspect of negligence attributed to the auto and the quantum of compensation awarded to the petitioners by the Tribunal in regard to the death of the deceased.

The only contention of the insurance company is that the conditions of the policy were violated by the vehicle owner by handing over the crime vehicle to a person who was not possessing valid and subsisting driving licence to drive the auto as on the date of accident and that filing of charge sheet against the driver of the auto by the police under Section 181 of the Motor Vehicles Act is enough to hold that the policy conditions are violated by the vehicle owner and on this sole ground the claim laid by the petitioners as against the insurance company ought to have been dismissed by the Tribunal. But the Tribunal, instead of exonerating the insurance company from its liability, has made it liable to pay the compensation along with the owner of the auto.

The insurance company examined its Assistant Manager as R.W.1 and marked Exs.B1 and B2 viz., the insurance policy copy and the attested copy of charge sheet through him to substantiate its contention that the insured violated the conditions of the policy by allowing a person who was not possessing a valid driving licence at the relevant point of time. The above contention raised by the insurance company was rejected by the Tribunal opining that the insurance company failed to adduce substantial evidence to prove its contention that the driver of the crime vehicle was not possessing valid and subsisting driving licence at the relevant point of time by relying on a decision of this Court reported in ***United India Insurance Company Vs. Mandapalli Gangarathnam*** [1]. The insurance company admittedly had not adduced any other evidence except the oral testimony of R.W.1 and Exs. B1 and B2 to prove its contention that the driver of the crime vehicle was not possessing valid and subsisting driving licence at the material point of time. Simply

[1] 2003 (3) ALD 328

because of filing of charge sheet against the driver of the crime vehicle under Section 181 of the Motor Vehicles Act, the insurance company cannot be absolved of its liability to pay the compensation along with the insured, as filing of charge sheet against the driver of crime vehicle under Section 181 of the Motor Vehicles Act is not enough to absolve the insurance company of its liability to pay the compensation since it is the duty of the insurance company to adduce substantial evidence to prove its contention that the driver of the crime vehicle was not possessing valid driving licence at the relevant point of time.

In the instant case the insurance company has not come up with any other evidence except the charge sheet which was filed under Section 181 of the Motor Vehicles Act against the driver of the crime vehicle to prove its contention that the policy conditions were violated. By filing the attested copy of charge sheet the insurance company cannot claim exemption from payment of compensation. The insurance company cannot escape from the responsibility of proving its case by mere filing copy of the charge sheet. Because of the failure on the part of the insurance company to adduce substantial evidence to prove its contention that the policy conditions are breached or violated by the insured, it cannot claim for exemption from payment of compensation. The evidence on record was thoroughly appreciated by the Tribunal before arriving to a conclusion that the insurance company failed to discharge its onerous responsibility of establishing its case. No convincible or valid grounds are made out to ask for setting aside the order passed by the Tribunal.

In the light of the above discussion, I am of the view that the Tribunal has rightly ordered for payment of compensation amount by the insurance company along with the insured by rejecting its contention in regard to the breach of conditions of the policy by the insured which it failed to establish by adducing substantial evidence.

Having not noticed considerable merit in the appeal filed by the insurance company, this Court declines to set aside the order impugned in this appeal.

In the result, the appeal is dismissed. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt. 22.12.2017
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