THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.758 of 2009

JUDGMENT :

The Appellant/Insurance Company aggrieved by the Award and Decree, dated 31.3.2008 in O.P.No.1087 of 2005 on the file of the Motor Accidents Claims Tribunal (District Judge) at Nizamabad, preferred this appeal, besides other grounds, on the ground that since the claimant himself is responsible for the accident and that he is the owner-cum-driver and no third party is involved, Insurance Company is not liable to pay the compensation.

On the other hand, respondent/claimant contended that since under Ex.B1-policy premium being paid under the Workmen Compensation Act, it covers the risk of driver and worker.

The claim of the respondent/claimant is that on 28.8.2004 while the claimant was driving the auto bearing No.AP 25 U 6802 at about 3 PM and when he reached the outskirts of Mungloor Village on Nanded to Hyderabad road, he lost the control over the auto and hit to a culvert and the vehicle turned turtle.

The claimant sustained fracture injuries to left hand, left hip joint, 6th and 7th left side ribs, injuries to head, right hand dorsum, back and other injuries all over the body.

The respondent/insurance company filed statement denying the averments and contended that even if the vehicle is insured with the insurance company, its liability is strictly governed by the provisions of the Motor Vehicles Act, Rules, terms and conditions of the relevant policy, which does not make the appellant liable for compensation.

Basing on the pleadings of both parties, the following issues are settled for trial.

1) Whether the accident has taken place due to rash and negligent driving of auto bearing No.AP 25/U-6802 by its driver?

2) Whether the petitioner is entitled to compensation? If so, to what just amount and against whom?

3) To what relief?

In support of the contention of the claimant, P.Ws.1 and 2 were examined and Exs.A1 to A10 and Ex.X1 were got marked and on behalf of the respondent/insurance company, R.W.1 was examined and Ex.B1 was got marked.

The claimant himself is examined as P.W.1 who is none other than the driver of the auto and accused as per Ex.A4 – charge sheet. His clinching evidence is that while he was driving the auto and when reached the culvert No.91/3 in the outskirts of Mungloor village, he lost the control over the vehicle and dashed against the culvert. Though P.W.1 was cross-examined at length, there was no suggestion to him with regard to rash and negligence.

Ex.A1 is the F.I.R. Ex.A3 is the copy of the panchanama and Ex.A4 is the charge-sheet. In Ex.A1 it is clearly mentioned that while driving the auto, the claimant lost the control over the vehicle and dashed the culvert No.91/3. Ex.A3 - panchanama and Ex.A4 - charge-sheet and Ex.A9 – photographs of the damaged auto goes to suggest that the accident was occurred as P.W.1 lost the control over the auto and the Police, after thorough investigation, filed Ex.A4-charge sheet under Section 338 I.P.C. against P.W.1 stating that there is damage to the auto.

The Tribunal, having considered the evidence of P.W.1 and Exs.A3, A4 and A9, came to the right conclusion that as P.W.1 lost control over the auto, the accident has occurred and he is the owner-cum-driver of the auto bearing No.AP 25 U 6802. The evidence of P.W.1 further established that he sustained fracture injuries to left hand, left hip joint and ribs on left side, injury on head i.e., occipital region, injury on right hand, back and other parts of the body. Ex.X1 – case sheet supports the said injuries and treatment in Government Hospital, Banswada and shifting the claimant to Government Hospital, Nizamabad where he took treatment for 15 days.

P.W.2 is the Doctor who treated P.W.1 in the Banswada Hospital. The injuries spoken by P.Ws.1 and 2 was supported by Ex.A2 – injury certificate and the further treatment as outpatient is proved by Ex.A7. Therefore, the evidence of P.Ws.1 and 2 corroborated and supported by Ex.A2, A7 and A8 and X1 goes to suggest that P.W.1 sustained fracture injuries to left hand, left hip joint and ribs on left side, injury on head i.e., occipital region, injury on right hand, back and other parts of the body. The claimant was admitted in the Hospital on 28.8.2004 and discharged on 10.9.2004. The damage to the auto is clear from Ex.A9 - photographs and under Ex.A10 - bills for repairing the auto.

Admittedly, Ex.B1 is the policy issued for the auto involved in the accident. A perusal of Ex.B1 goes to suggest that the auto was insured with the appellant and the policy was in force from 30.1.2004 to 29.1.2005 where as the accident occurred on 28.8.2004 by which date Ex.B1 policy is in force. With regard to the coverage of the policy, there is the evidence of R.W.1, who is the Assistant of the respondent-insurance company, who admits the issuance of Ex.B1 policy in favour of the claimant for the auto bearing engine No.24795 and chasis No.24803. Ex.B1 is admittedly comprehensive policy covering the risk of three passengers - one driver, damage to the vehicle and third party property damage up to a limit of Rs.6,000/-.

R.W.1 during cross-examination admitted that Ex.B1 - policy covers the risk of driver and since it is comprehensive policy, damage is also covered subject to assessment by the surveyor. It is also a fact that P.W.1 was the driver of the auto at the time of accident and even as per Exs.A1 and A4, the petitioner paid Rs.25/- as premium to cover the risk of the driver and worker under Ex.B1.

In fact, the claimant is the insured and the appellant is the insurer. The claimant was driving the auto bearing No.AP 25 U 6802 as owner-cum-driver. As per Exs.A1, A3 and A4, the claimant was working as driver of the said auto. Ex.B1 policy reveals that premium was paid for the coverage of the driver of the auto and R.W.1 in the evidence clearly admitted that Ex.B1 policy covers the risk of the driver.

In the facts and circumstances discussed above, I find that the Tribunal, after thorough discussion of the facts, evidence – both oral and documentary and the legal proposition, came to the right conclusion that Ex.B1 policy covers the risk of the driver and accordingly awarded the compensation. The findings of the Tribunal are legal, valid and do no suffer from any infirmities warranting interference. Hence, the appeal fails.

In the result, the appeal is dismissed without costs, while confirming the Award and Decree, dated 31.3.2008 in O.P.No.1087 of 2005 on the file of the Motor Accidents Claims Tribunal (District Judge) at Nizamabad.

Advocate fee is fixed at Rs.2,000/-.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N. BALAYOGI

10th October, 2017

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