HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No.1312 of 2010

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant – Oriental Insurance Company Limited (insurer), challenging the judgment and decree dated 26.11.2008, in O.P.No.18 of 2007 passed by the Chairman, Motor Accidents Claims Tribunal (District Judge) at Nizamabad (for brevity "the Tribunal"), partly allowing the petition awarding compensation of Rs.5,17,000/- with interest @ 9% per annum, as against the claim of Rs.6,00,000/- laid under Section 166(1)(c) of the Act for the death of the deceased-Goondla Namilla Pentaiah, who died in a motor accident that occurred on 03.02.2006.

2. The appellant – insurer is respondent No.2, respondent Nos.1 and 2 are claim petitioners, and respondent No.3 – owner of the offending Lorry bearing No.AP-26/V-1116 is respondent No.2 in O.P.No.18 of 2007. For the sake of convenience, the parties are referred to as they were arrayed in O.P.No.18 of 2007 before the Tribunal.

3. The brief facts of the case are that, while the deceased-Pentaiah was travelling as a labourer on the offending lorry for the purpose of loading and unloading the sand, it met with an accident due to the rash and negligent driving by the

driver of the offending Lorry. By the date of accident, the deceased was aged 38 years old and he was a labourer by profession. The petitioners, who are legal heirs of the deceased, made a claim of Rs.6,00,000/- for the death of the deceased against respondent Nos.1 and 2. Respondent No.1 - owner of the offending lorry remained exparte. The 2nd respondent – insurer filed counter denying its liability, wherein it has taken a plea that the driver of the offending lorry was not having a valid driving license to drive the lorry and that the deceased was travelling in the lorry as an unauthorized passenger. Since the lorry is being used as a goods carrying vehicle and as there is violation of the terms and conditions of the Insurance policy, there is no coverage for the risk of the deceased. The Tribunal, on consideration of the evidence of P.Ws.1 and 2 and the documentary evidence under Exs.A.1 to A.4, vide judgment and decree dated 26.11.2008, held that the driver of the offending lorry drove it in a rash and negligent manner and accordingly awarded compensation of Rs.5,17,000/- for the death of the deceased. Aggrieved by the said judgment and decree dated 26.11.2008, the appellant-insurer has preferred this appeal.

4. Heard learned Standing Counsel for the appellant – insurer, as well as learned counsel for respondent Nos.1 and 2 – claim petitioners. Perused the judgment under appeal and also the evidence on record.

5. Learned Standing Counsel for the appellant-insurer submits that the deceased travelled as an unauthorized passenger in the offending lorry, which is a goods vehicle, and there is no coverage for the risk of unauthorized passengers in a goods vehicle and, therefore, the appellant-insurer is not liable to pay compensation.

6. On the other hand, learned counsel for the respondents-petitioners submits that after considering the evidence and material on record, the Tribunal has clearly held that the deceased travelled as a labourer in the lorry for the purpose of loading and unloading the sand and as per Ex.B.1 – Insurance Policy, the 1st respondent – owner of the offending lorry has paid premium for LL to employees besides paying premium towards Basic, driver etc., therefore, there is coverage of the risk of the labourers, who travelled while working on the lorry for loading and unloading of sand. It is further contended that there is no illegality in the impugned judgment passed by the Tribunal fixing liability on the insurer.

7. The contention that Ex.B.1 – Insurance Policy does not cover the risk of unauthorized passengers is concerned, it is to be seen that the offending lorry was insured with the appellant under Ex.B.1 – Insurance Policy, which is a comprehensive policy. The limitations as to use of Ex.B.1 – Insurance Policy reads as follows:

"**Limitations as to Use:**

The Policy covers use only under a permit within the meaning of the Motor Vehicle Act, 1988 or such a carriage falling under Sub-section 3 of Section 66 of the Motor Vehicles Act, 1988.

1. Use only for carriage of goods within the meaning of the Motor Vehicles Act. The Policy does not cover (1) Use for organized racing, pace-making, reliability trial or speed testing. (2) Use whilst drawing a trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicle. (3) Use for carrying passengers in the vehicles; except employees (other than the driver) not exceeding the number permitted in the registration document and coming under the purview of Workmen's Compensation Act, 1923."

From the above, it is evident that there is a special reference to the coverage of the employees other than the driver as per Clause (1) of the Policy. Therefore, the Tribunal has rightly placed reliance on the said clause and held that since the deceased was a labourer working on the offending lorry for loading and unloading sand, there is coverage of risk under Ex.B.1 – Insurance Policy and hence there is no need to interfere with the findings recorded by the Tribunal in this regard.

8. Learned Standing Counsel for the appellant further submitted that the compensation awarded by the Tribunal is on higher side and it requires to be reduced. It is contended that the rate of interest @ 9% per annum awarded by the Tribunal is also on higher side and the same may be reduced

to 7.5% per annum, which is the prevailing rate of interest at the relevant point of time.

9. Learned counsel for the respondents-petitioners has not opposed for reducing the rate of interest from 9% to 7.5% per annum, however, submitted that the respondents-petitioners are entitled even for enhancement of compensation.

10. Learned Standing Counsel for the appellant-insurer further submitted that the multiplier '16' applied by the Tribunal for the age of the deceased, who was 38 years old, is not in accordance with the decision of the Hon'ble Apex Court in SMT. SARLA VERMA AND OTHERS Vs. DELHI TRANSPORT CORPORATION AND ANOTHER[1], since as per the said decision, the appropriate multiplier applicable to the age group of the deceased is '15'.

11. It is pertinent to note here that this is a case pertaining to the year 2010 and as the rate of interest is already reduced from 9% to 7.5% per annum, I do not see any valid reason to interfere with the findings of the Tribunal with regard to the multiplier applied by it now.

12. It is also pertinent to note that this is an appeal by the Insurance Company and, therefore, the respondents-petitioners cannot seek for enhancement of compensation in an appeal filed by the appellant – Insurance Company.

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[1] 2009 (6) SCC 121

However, in view of the submissions made on behalf of the appellant-insurer and the respondents-petitioners and in the light of the decision of the Apex Court in DHARAMPAL AND OTHERS Vs. U.P. STATE ROAD TRANSPORT CORPORATION[2], this Court is of the view that it would be just and proper to reduce the rate of interest awarded by the Tribunal from 9% to 7.5% per annum from the date of petition till the date of realization.

13. Accordingly, this Civil Miscellaneous Appeal is allowed in part, reducing the rate of interest from 9% to 7.5% per annum from the date of the petitioner till realisation. In all other aspects, the judgment and decree dated 26.11.2008, in O.P.No.18 of 2007 passed by the Tribunal shall remain unaltered. The appellant-insurer is directed to deposit the compensation awarded by the Tribunal within a period of one month from the date of receipt of a copy of this judgment. On such deposit being made, the respondents-petitioners are permitted to withdraw the same as apportioned by the Tribunal. No order as to costs.

14. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

20.11.2017.
Msr

[2] MANU/SC/7680/2008

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