

HON'BLE SRI JUSTICE CHALLA KODANDA RAM**C.M.A. No. 884 of 2004****AND****CROSS OBJECTIONS (SR) No.43009 of 2004****COMMON JUDGMENT:**

1) C.M.A. No.884 of 2004, under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act") and Cross-Objections (SR) No.43009 of 2004 under order XLI Rule 22 of C.P.C. are separately filed by the Appellant-New India Assurance Company Limited and Cross-objector-petitioners, aggrieved by the Award dated 20.09.2001 passed in M.V.O.P.No.61 of 2000 by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Chittoor (for short "the Tribunal), whereby the Tribunal granted a compensation of Rs.1,63,100/- against the claim of Rs.3,50,000/-for the death of one C.Harikrishna (hereafter called as "the deceased") who died in a motor vehicle accident that took place on 09.07.1999 at about 1.00 p.m. near Seetharampet, S.T. Colony, Satyavedu Mandal on Puttur Satyavedu main road and directed the respondents to pay the same with interest, at the rate of 12% p.a., from the date of petition till the date of realization.

2) The parties hereinafter are referred to as arrayed in the affidavit filed in support of the C.M.A.No.884 of 2004.

3) Learned counsel for the appellant-New India Assurance Co. Ltd., submits that the insurance company is not liable to pay compensation on account of the fact that the vehicle was used in violation of the policy conditions and further the accident was caused by a person, who was having no license. Learned counsel for the appellant further submits that the learned Chairman of the Tribunal failed to appreciate the facts and the evidence on record in proper perspective, particularly, the discrepancy with respect to the learners

license, which was placed on record as Ex.B2 and failed to appreciate the discrepancy in the evidence with respect to the name of the driver. Elaborating on the same, he would submit that initially in the F.I.R. the name of the driver was shown as one Giri, thereafter in the charge sheet a change came around in the charge sheet mentioning Giri alias Raju. The Tribunal without considering these aspects, erroneously granted a compensation of Rs.1,63,100/- with interest at the rate of 12% p.a. from the date of O.P. till the date of realization and hence prayed to allow the Appeal setting-aside the impugned Award.

4) Whereas, it is the case of the respondents-cross-objectors that the Tribunal having accepted the evidence of P.W.3, who was the employer of the deceased, erred in determining the monthly income of the deceased at Rs.1,200/- and the Tribunal also gravely erred in granting a low sum of Rs.5,000/- under the head of loss of consortium and also in not granting any amount under the head of pain and suffering and loss of expectation of life. Therefore, prayed for enhancement of the compensation amount.

5) The contention of the learned counsel for the appellant that at the time of accident the driver of the vehicle has only learners license and thus the Insurance Company is not liable to pay any compensation is not a tenable ground, for this Court in **Branch Manager, New India Assurance Co. Ltd., Nadyal, Kurnool District, A.P. V Eepanagalla Pedda Seethaiah and others¹**, relying on the judgment of the Supreme Court in **National Insurance Company Limited v Swaran Singh²**, held that if the vehicle at the time of accident was driven by a person having a learner's license, the

¹ 2016 (6) ALD 713

² (2004) 3 Supreme Court Cases 297

Insurance Companies would be liable to satisfy the decree. Therefore, the Insurance Company cannot be exonerated from its liability on the ground that the driver was holding only learner's license at the time of accident. Hence, the judgment under Appeal cannot be found fault with and the Appeal is liable to be dismissed.

6) At this stage, it is represented by the learned counsel for the respondents that respondents 4 and 5, the parents of the deceased, died. In support thereof he produced the copies of the death certificates issued by the Panchayat Secretary, Madanambedu, Sathyavedu Mandal. In those circumstances, the entire compensation is liable to be paid to the surviving legal heirs of the deceased, contends the learned counsel.

7) Learned counsel for the appellant readily agrees that they have no objection for the same.

8) In view of the above, the Appeal as well as the Cross-objections filed by the cross-objectors are dismissed, however, subject to the surviving respondents filing copies of the Death Certificates of the 4th and the 5th respondents before the Court below, the amount of compensation, that is to be deposited by the insurance company, shall be permitted to be withdrawn. No costs.

9) Miscellaneous petitions, if any, pending shall also stand dismissed.

CHALLA KODANDA RAM, J

Dated:20.12.2017.
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