THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 2804 OF 2005

JUDGMENT:

The award dated 12.7.2005 passed by the Motor Accidents Claims Tribunal (I-Addl. District Judge, Mahabubnagar) in OP No. 626 of 2000 is assailed by the New India Assurance Co. Ltd. which has been arrayed as respondent No.2 in the above mentioned claim petition.

The parties are hereinafter referred to as they are arrayed before the Tribunal.

The petitioners 1 and 2 being the only surviving legal heirs of the deceased Thoka Ramudu filed a claim petition under Section 166 of the Motor Vehicles Act raising a claim for compensation of Rs.4,00,000/- as against the 'owner' and 'insurer' of tractor-trailer bearing No. AP 22 T 6811 (respondents 1 and 2) in respect of death of the deceased Toka Ramudu, who was a resident of Ananthapuram village of Gadwal Mandal, in a road accident occurred on 20.5.2000 near K.M.No. 163/4 on N.H.No. 7 near Bheechupally due to the rash and negligent driving of the tractor-trailer by himself.

The Tribunal, on appreciation of the oral and documentary evidence produced by the petitioners, has held that the 'insurer' and the insured of the offending tractor-trailer (respondents 1 and 2) are liable to pay the compensation to the petitioners, by placing reliance upon a judgment of this Court reported in *Kore Laxmi and others Vs. M/s.*

United India Insurance Company Limited, Nizamabad district and others [1].

The main grounds on which the award of the Tribunal is assailed are that (1) the Tribunal established under the Motor Vehicles Act has no jurisdiction to entertain the case of this nature; (2) the interest awarded by the Tribunal is on higher side (3) and last and final contention, on which more stress is made, is that the liability of the insurance company is limited only to the extent provided under the Workmen Compensation Act. Reiterating the above mentioned contention, it is argued by the appellant that the Tribunal awarded compensation of Rs.3,35,000/- instead of restricting the liability of the insurance company to Rs.2,43,000/-. In support of the above mentioned contention, the insurance company relied upon a decision of the Supreme Court reported in *National Insurance Co. Ltd Vs. Prembai Patel and others* [2] and a decision rendered by this Court reported in *Oriental Insurance Co. Ltd., Warangal Vs. Thudi Mallamma and others* [3]. The insurance company has also taken a stand that the first respondent committed breach of covenants of insurance policy since the deceased was possessing a licence to drive a light motor vehicle.

The learned counsel appearing for the petitioners-claimants, while answering the contentions of the insurance company, stated that the decisions relied upon by the insurance company cannot be applied to the case on hand for the reason that the insurance policy obtained in respect

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[1] 2003 (6) ALT 230 (DB)
[2] 2005 ACJ 1323
[3] 2000 (6) ALT 585

of the vehicle involved in the present case is ‘comprehensive policy’, which covers the risk of drivers, cleaners and others and that the petitioners laid the claim for compensation under the Motor Vehicles Act, as they could choose either of the forums established under the Motor Vehicles Act or under the Workmen Compensation Act.

The learned counsel for the petitioners brought to the notice of this Court that the second petitioner-Toka Savaramma who is the mother of the deceased is no more. Hence the first petitioner who is the wife of the deceased is alone entitled to get the compensation which is remained unpaid by the respondents 1 and 2.

There is no quarrel on the aspect that the deceased Toka Ramudu died in the accident during the course of his employment under the first respondent, the owner of the tractor-trailer bearing No. AP 22 T 6811. There is also no dispute with regard to death of the second petitioner who is the mother of the deceased.

The petitioners being the legal heirs of the deceased has laid the claim against the respondents 1 and 2, the ‘owner’ and ‘insurer’ of the offending vehicle under the Motor Vehicles Act, though they could lay a claim under the Workmen Compensation Act since the death of deceased occurred during the course of employment under the first respondent in terms of Section 167 of the Motor Vehicles Act where it is postulated that the victims of the accident could choose either of the forums in case of death or bodily injury caused in course of employment. The Tribunal in its order at pages 3 and 4 had dealt the contention raised regarding non-raising of claim by the petitioners under the Workmen Compensation

Act. The Tribunal also dealt the aspect of non-quoting of the provisions under Section 163-A of the Motor Vehicles Act. The insurance policy obtained in respect of the offending vehicle by the first respondent was a comprehensive policy which covers the risk of drivers, cleaners etc and so far as this aspect is concerned, there is no dispute. In *National Insurance Co. Ltd Vs. Prembai Patel and others* (2nd supra) cited by the learned counsel for the appellant-insurance company, the policy obtained in respect of the vehicle involved in the accident was an Act policy which covers the risk of third parties alone. The decision rendered by the Apex Court in a different situation restricting the liability of the insurance company cannot be applied to the case on hand. Under Section 147 of the Motor Vehicles Act liability upon the insurance company can be fastened and it can be made liable to satisfy the entire award passed by the Tribunal. The appellant having accepted to indemnify the liability of the insured (first respondent/owner of the offending vehicle) under Ex.A5-insurance policy cannot claim that it can be exonerated from its liability to pay the entire compensation and that its liability is to be restricted to Rs.2,43,000/- only. Regarding the contention of the insurance company that there is a breach of covenants of insurance policy, the Tribunal, on a close scrutiny of the insurance policy where the weight of the vehicle is mentioned as 6400 kilo grams and as per Section 2 (21) of the Motor Vehicles Act a motor vehicle can be termed as ‘light motor vehicle’ when its weight does not exceed 7500 kilo grams, has made the insurance company liable to pay the compensation to the petitioners. The Tribunal has dealt each and every contention raised by the insurance company in detail in its order. The Tribunal fixed the liability on the respondents 1 and 2 by recording sound reasons. I find no substantial material to differ from the view taken by the Tribunal in fixing the liability as against the insurance company-second respondent.

The other aspect raised by the learned counsel for the appellant-insurance company regarding scaling down of the rate of interest is the only area where this Court can intervene. Considering the contention raised by the appellant-insurance company in the appeal grounds, this Court hereby reduces the rate of interest to 7.5% per annum from 9% as awarded by the Tribunal, having felt that the interest rate awarded by the Tribunal is on higher side. Except the reduction in rate of interest, rest of the award passed by the Tribunal is hereby confirmed.

In the result, the appeal is partly allowed reducing the rate of interest from 9% per annum to 7.5% per annum. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

JUSTICE J. UMA DEVI

Dt. 9.3.2017
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