HON'BLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A.No. 2072 of 2010

JUDGMENT:-

This appeal is arising out of the order and decree dated 13.08.2009 in O.P.No. 621 of 2007 passed by the Motor Accidents' Claims Tribunal-cum-V Additional District Judge, F.T.C., Anantapur.

The appellant is the New India Assurance Company Limited, respondent Nos.1 to 4 herein are the claimants and the 5th respondent herein is the owner of the crime vehicle.

The claimants filed Original Petition before the Tribunal under 163-A of Motor Vehicles Act claiming compensation of Rs.2,50,000/- against the owner of the crime vehicle and the insurer on the ground that P.Paramesappa died in a motor vehicle accident that occurred on 18.04.2004 at 11:00 P.M. near Boothpur village on N.H.7 Road.

The brief facts of the case are that while the deceased – P.Paramesappa was traveling as a coolie by a lorry bearing No. KA40 780 belonging to the 1st respondent to unload iron from it, because of rash and negligent driving of driver of the lorry at Boothpur village on N.H.7 road, it dashed against the dividers and turned turtle, as a result, the deceased died on the spot. The claimants, who are the legal representatives of the deceased, filed the O.P. before the Tribunal claiming compensation of Rs.2,50,000/-. The owner of the crime vehicle, remained *ex parte* and the Insurance company filed its counter affidavit denying its liability pleading that the claim of the claimants is exorbitant. The Tribunal, on consideration of the evidence of PW1 and Exs.A1 to A6 and the evidence of RW1 and Exs.B1 to B6, has allowed the claim petition awarding compensation of Rs.1,40,000/- holding that the insurer and the owner of the crime vehicle are jointly and severally liable to pay compensation.

Being aggrieved by the compensation, the New India Assurance Company Limited has filed the present appeal mainly on the ground that the deceased traveled in the lorry as a mid-way passenger or gratuitous passenger. He did not travel in the lorry as a non-fare paid passenger. It is further argued that there is no coverage for the risk of the deceased, and therefore, the insurer is not liable to pay any compensation.

Heard the arguments of Sri Sriman, learned counsel for the appellant – Insurance Company and Sri M. Kari Basaiah, learned counsel for the respondents-claimants and perused the material on record.

The learned counsel for the appellant has mainly contended that the deceased travelled in the crime vehicle, which is a goods carrier, as unauthorized passenger, and therefore, there is breach of policy conditions as contemplated under Section 147 of Motor Vehicles Act, as such, the Insurance Company is not liable to pay any compensation. The learned counsel has relied on a decision and submitted that the deceased traveled as either mid-way or unauthorized passenger in the goods vehicle, therefore, the insurer is not liable to pay compensation to the claimants.

The learned counsel for the respondents-claimants submit that the Tribunal in paragraph No.24 of its judgment has considered that the deceased was non-fare paid passenger, and there is coverage of insurance policy for the risk of the deceased as the Insurance Company has collected Rs.75/- towards non-fare paid passenger. It is further submitted that as per the policy in I.M.T. 37-A, there is a provision of legal liability to non-fare paid passengers who are not employees of the insured. It is further submitted that the Tribunal, on placing reliance on the policy in I.M.T. 37-A, came to the right conclusion that the risk of the deceased was covered by the Insurance Company, and accordingly, awarded the compensation fixing liability both on the insurer and the owner of the crime vehicle.

It is pertinent to note that the Tribunal has properly appreciated the evidence on record and came to the conclusion that the deceased traveled as non-fare paid passenger in the crime vehicle and an amount of Rs.75/- was collected by the insurer towards non-fare paid passenger, and therefore, there is coverage of the risk of the person who traveled as non-fare paid passenger. Therefore, the argument advanced by the learned counsel for the appellant that the deceased traveled as a mid-way passenger or an unauthorized passenger cannot be accepted.

In view of the foregoing reasons, the award passed by the Tribunal placing reliance on the fact that the deceased traveled as non-fare paid passenger, as such, there is liability on the part of the insurer, cannot be said to be perverse. The Tribunal has rightly come to the conclusion that the deceased traveled as a non-fare paid passenger and it is an undisputed fact that an amount of Rs.75/- was paid to the insurer. As per I.M.T. 37-A (b), any person directly connected with the journey in one form or the other being carried in or upon or entering or mounting or alighting from the vehicle insured described in the Schedule of the Policy, there is liability for the insurer to pay compensation.

On consideration of the arguments of the learned counsel for the parties and in view of the facts and circumstances of the case, and considering that the deceased traveled as a non-fare paid passenger, the insurer is directed to pay compensation at the first instance and recover the same from the owner of the crime vehicle.

The order of the Tribunal is modified to the extent of fixing liability against the appellant – New India Assurance Company Limited for payment of compensation to the claimants at the first instance and directing the appellant to recover the same from the owner of the crime vehicle. To the extent of modification of the award as indicated above, the appeal is partly allowed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. SHYAM PRASAD, J

08.09.2017

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