THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 2643 OF 2005

JUDGMENT:

Aggrieved by the order dated 11.3.2004 passed by the Motor Accident Claims Tribunal-cum-District Judge, Kadapa in OP No. 105 of 2001, the present appeal is filed by the New India Assurance Company Limited, which has been arrayed as 2nd respondent in the above mentioned OP.

The prime contention raised by the appellant/2nd respondent-insurance company is that the Tribunal has fastened the liability as against it by coming to an erroneous conclusion that the claimant has traveled in the tractor-trailer of the 1st respondent in the capacity of agricultural cooli. The second contention of the insurance company is that a lump sum compensation was awarded by the Tribunal, though the wound certificate-Ex.A2 was not proved by examining a doctor who treated the claimant. The third contention raised by the insurance company is that the trailer was separated from the tractor as the hook connecting the tractor was broken. In other words, the contention of the insurance company is that the alleged accident had taken place due to *mechanical defect* and that it is not liable to indemnify the owner of the vehicle in case of occurrence of the accidents due to *mechanical defect* etc. These are the prime contentions raised by the insurance company to disown its liability.

Since these being the principal contentions of the insurance company, the order passed by the Tribunal needs to be thoroughly examined. The Tribunal at para-4 of its order had dealt the aspect of negligence attributed to the driver of the tractor-trailer and came to the opinion that the accident had taken place due to the negligent driving of the offending tractor by its driver and that the contention, if any, raised by the insurance company that the driver of the tractor was not at fault was not proved substantially, by examining the driver of the offending vehicle etc. Similarly the insurance company's contention that the accident took place due to the mechanical defect was not established.

So far as the liability aspect regarding which a contention is raised by the 2nd respondent/insurance company that the Tribunal is at fault in fastening the liability as against it, since the vehicle in question has not been used for agricultural purpose for which policy is obtained primarily by the vehicle owner etc. It is also the contention of the insurance company that the claimant travelled in the tractor-trailer belonging to the 1st respondent as an *unauthorized passenger* but not in the capacity of agricultural cooli etc.

In so far as the above contention raised by the insurance company, the Tribunal, on appreciation of the evidence of the claimant-injured whose evidence is corroborated on all aspects by the documents produced by him viz., Exs.A1 to A3, the certified copies of FIR and charge sheet wherein it is clearly stated that the accident had taken place due to the rash and negligent driving of the tractor-trailer by its driver, has given a finding that the driver of the tractor-trailer is at fault and that the negligence attributed to him is proved.

In so far as the finding recorded by the Tribunal for fastening the liability as against the insurer of the offending tractor-trailer, regarding which strenuous arguments were advanced, the Tribunal at para-6 of its order, on appreciation of the evidence of R.W.1, the Administrative Officer of the insurance company, has come to the opinion that the ocular evidence, if any, given by him in no way lends support to the case of the 2nd respondent-insurance company as he has no personal knowledge about the accident or about the purpose for which the vehicle was used at the relevant point of time etc. The Tribunal has made the following observations in para-6, at page 5 in the order passed by it,

> "In the FIR (Ex.A1) what all stated in this regard is that the petitioner and other villagers were going to attend canal work by the side of road at Ankepadu village. By mere mentioning of attending to canal work by the side of a road by itself cannot mean that the tractor is being used for non-agricultural purpose. On the other hand, in the absence of any other evidence or circumstance to the contrary, earth work in canals probabalise that it is apparently for agricultural purpose, but not otherwise. Usually agriculturists get deepened the canals by removing the silt for free flow of irrigation water. Therefore, in the absence of any other circumstance or evidence, to the contrary, attending earth work in canal cannot by any stretch of imagination be said to be non-agricultural work."

The findings recorded by the Tribunal in fastening the liability as against the insurance company by disbelieving its contention that the offending vehicle used by the insured other than the agricultural purpose for which the vehicle was insured etc, cannot be faulted. Deepening of canals by removing silt by the agricultural coolies for free flow of water take place normally in villages. Since the claimant seems to have travelled along with others as a cooli as seen from Exs. A1 and A3, the conclusion, if any, arrived by the Tribunal in fastening the liability as against the insurance company cannot be said as incorrect. This Court finds no other substantial material to dissent from the views expressed by the Tribunal while fastening the liability as against the appellant/insurance company.

The Tribunal, on appreciation of the wound certificate and the ocular testimony of the claimant, has awarded compensation of Rs.75,000/- and the said compensation amount in the opinion of this Court is just and reasonable. No substantial grounds are made out by the appellant to order for setting aside the order passed by the Tribunal. Hence the order of the Tribunal is hereby affirmed.

In the result, the appeal is dismissed. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt. 7.4.2017
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