HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No.1571 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 – M/s. Bajaj Allianz General Insurance Company Limited challenging the Award and decree dated 20.04.2010 in O.P.No.269 of 2008 passed by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Anantapur District (for brevity "the Tribunal"), in partly allowing the O.P. directing respondent Nos.1 and 2 therein, who are owner and insurer, respectively, to pay jointly and severally a sum of Rs.1,74,000/- towards compensation, out of the claim of Rs.2,00,000/-, with costs and interest @ 7.5% per annum from the date of petition till payment, for the death of deceased – R. Kesava in a motor vehicle accident.

2. The Appellant – M/s. Bajaj Allianz General Insurance Company Limited (insurer) is respondent No.2, respondent No.1 is the petitioner, respondent No.2 - owner of the motor cycle bearing No.AP-02-M4104 is respondent No.1, and respondent Nos.3 and 4 - parents of the deceased are respondent Nos.3 and 4, in O.P.No.269 of 2008.

3. The brief facts of the case are that on 23.08.2006 at 2.30 p.m., the deceased – R. Kesava was going in a motor cycle bearing registration No.AP-02-M4104 and when he was proceeding near Vagdevi School, he lost control and dashed against the Neem tree. He sustained injuries and later died on the way to the Hospital. A case in Crime No.61/2006 was registered at Yadiki Police Station. The petitioner, who is the wife of the deceased – R. Kesava, has filed the above O.P. under Sections 140 and 163-A of the Act, claiming compensation of Rs.2,00,000/- for the death of deceased – R. Kesava in a motor vehicle accident.

4. Before the Tribunal, while respondent Nos.3 and 4, who are parents of the deceased, remained exparte, the 1st respondent – owner of the offending vehicle and 2nd respondent – insurer contested the claim petition by filing separate counters denying their liability.

5. The 1st respondent filed counter stating that a case was registered in Yadiki Police Station, who filed a final report stating that the accident took place due to the negligent driving of the motor cycle by the deceased, who is working as driver under him and took the vehicle to go to the native place of his wife and thereby denying his liability to pay compensation. The 2nd respondent – insurer filed counter stating that the policy was issued in the name of the 1st respondent – owner of the vehicle subject to terms and

conditions and that the deceased was not holding valid driving licence on the date of accident, that the 1st respondent handed over the vehicle to the deceased, thereby he contravened the provisions of the Act and committed breach of terms and conditions of the policy and hence the insurer is not liable to pay compensation and sought to dismiss the petition.

6. The Tribunal on consideration of the facts and circumstances of the case and the evidence on record, by Award and decree dated 20.04.2010, answered issue No.1 holding that the accident occurred due to the rash and negligent driving by the deceased himself and accordingly, held that respondent Nos.1 and 2 therein, who are owner and insurer, respectively, of the offending vehicle are jointly and severally liable to pay compensation of Rs.1,74,000/- with costs and interest @ 7.5% per annum from the date of petition till payment, by appropriately apportioning the compensation amount between the petitioner and respondents 3 and 4 therein, who are parents of the deceased. Aggrieved by the same, the appellant-insurer has preferred the present appeal on various grounds, denying the liability of the insurer.

7. Heard Sri A. Ramakrishna Reddy, learned Standing Counsel for the appellant-insurer, Sri M. Karibasaiah, learned counsel for the 1st respondent-petitioner, and Sri K. Srinivas,

learned counsel for respondent Nos.3 and 4, parents of the deceased, and perused the material on record, including the impugned Award dated 20.04.2010.

8. Learned Standing Counsel for the appellant-insurer submits that the 2nd respondent – owner of the offending vehicle has entrusted the vehicle to the deceased for private purpose and when a person is driving the vehicle with the consent and permission of the owner of the said vehicle, such person, for all purposes, steps into the shoes of the owner and he cannot be considered as a third party for the purpose of payment of compensation under Section 163-A of the Act, in view of the decision rendered in LATABAI BHAGWAN KAKADE Vs. MOHD. ISMAIL MOHD. S. BAGWAN[1].

9. It is further contended by the learned Standing Counsel for the appellant-insurer that the deceased died due to his own negligence while driving the motor cycle and as he is not a third party, the appellant-insurer is not liable to pay compensation. It is also contended by the learned Standing Counsel that the owner of the offending vehicle has entrusted the said vehicle to the deceased for his private trip and, therefore, the deceased steps into the shoes of the owner of the vehicle, and as the accident occurred due to the negligence on the part of the deceased himself, the insurer is not liable to pay compensation.

[1] II (2002) ACC 742 (DB)

10. The object of Section 163-A of the Act is to provide compensation to the victim or legal heirs of the victim. They are entitled to claim compensation in terms of Section 163-A read with Schedule-II of the Act, without either pleading or proving that the accident in question had resulted from any act or negligence or default on the part of the owner or driver of the vehicle. The said proposition of law was laid down in SULOCHANA Vs. KARNATAKA STATE ROAD TRANSPORT CORPORATION[2].

11. Section 163-A of the Act clearly postulates that it is not necessary for the claimants to plead and prove negligence. Section 163-A of the Act is in the nature of a beneficial Legislation, enacted with a view to confer the benefit of expeditious payment as per the structural formula by way of compensation to the victims of the accidents arising out of the use of a motor cycle on the basis of 'no fault liability'. In the matter of interpretation of beneficial Legislation, the approach of the Courts is to adopt a construction, which advances the beneficial purpose underlying the enactments in preference to a construction, which tends to defeat the purpose. The object and purpose of introducing Section 163-A of the Act is to give compensation to the victims of the motor vehicle accidents or to their relatives by following II-Schedule of the Act. The said

[2] II (2004) ACC 534 (DB)

proposition of law was laid down in the case of LATABAI BHAGWAN KAKADE's case (1 supra).

12. The liability to pay compensation under Section 163-A of the Act is based on the principle of 'No fault liability'. It is, therefore, not necessary to plead or establish any default, wrong or negligence on the part of the owner, driver or any other person, in an application for compensation as per the said provision. Section 163-A of the Act is in the nature of a Social Welfare Legislation for the benefit of two distinct classes of people viz., (i) unfortunate victims of accidents arising out of the use of motor vehicles, who are permanently disabled; and (ii) heirs of unfortunate victims killed in such accidents. When a beneficial Statute is reasonably capable of two constructions, that construction should be referred, which furthers the policy of the Act and is more beneficial to those in whose interest the Statute has been enacted. There can hardly be any doubt that Section 163-A of the Act, has been enacted in the interest of those unfortunate accident victims, who are either killed or are incapacitated for life. The said proposition of law was laid down in MANORAMA DEVI Vs. ORIENTAL INSURANCE CO. LTD.[3]

13. Therefore, the arguments advanced by the learned Standing Counsel for the appellant-insurer does not hold good in view of the decisions referred to supra, whereunder it

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[3] III (2002) ACC 683 (DB)

is clearly laid down that in a petition filed under Section 163-A of the Act, in a case where the accident occurred out of the use of the motor vehicle in a public place, the claimant need not plead and prove the rash and negligence on the part of the rider of the vehicle.

14. The contention of the appellant-insurer that the deceased died of his own negligence and, therefore, the insurer is not liable to pay compensation cannot be sustained in view of the principle of 'No fault liability' as laid down in the decisions referred above.

15. The further contention of the learned Standing Counsel for the appellant-insurer that the driver of the crime vehicle was not having a valid driving licence as on the date of accident cannot be sustained for the reason that the Tribunal has given a clear and categorical finding holding that the driver of the crime vehicle is having driving licence to drive Transport and Non-transport vehicles. Therefore, there is no force in the said contention raised by the learned Standing Counsel for the appellant-insurer.

16. At this juncture, learned Standing Counsel for the appellant-insurer placed reliance on a decision rendered by this Court in BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD., HYDERABAD v. GADDAM SWAMI REDDY AND

ANOTHER[4] and submitted that the claimants have not adduced any evidence to show that the accident occurred in the course of employment of the deceased under the owner of the offending vehicle and that as per the terms and conditions of the policy under which the vehicle involved in the accident was insured has no coverage of risk. It is further argued that in para-9 of the said judgment, this Court observed as follows:

> "The Tribunal had recorded a categorical finding that the accident was on account of the fault of the claimant himself, who was driving the vehicle at material time. Therefore, under law, he is not entitled to maintain a claim under the provisions of Section 163-A of the Motor Vehicles Act which founded on fault liability principle. Therefore, the Tribunal in my considered view went wrong in holding that the claim under Section 163-A of the Act is maintainable before it and that the Insurance Company is liable to pay compensation to the claimant. The said finding is liable to be set aside in the present appeal."

17. In the instant case, as contended by the learned Standing Counsel for the appellant-insurer, the deceased cannot be considered as a third party, as the owner had entrusted the vehicle to the deceased, who is his worker, thereby the deceased steps into the shoes of the owner of the vehicle. No doubt, there is evidence on record to show that the deceased was working under the owner of the vehicle, but, the vehicle was entrusted by the owner to the deceased for the purpose of the deceased going to the native place of

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[4] 2013 (3) ALD 66

his wife. Thus, there is no evidence on record to show that the deceased was travelling in the vehicle during the course of his employment. Therefore, in the light of the decision of this Court relied upon by the learned Standing Counsel for the appellant-insurer in GADDAM SWAMI REDDY's case (supra), the appellant-insurer is not liable to pay any compensation to the respondents-petitioners and hence the finding of the Tribunal imposing liability of paying compensation against the appellant-insurer is liable to be set aside.

18. Accordingly, the Civil Miscellaneous Appeal is allowed, modifying the impugned Award and decreed dated 20.04.2010 in O.P.No.269 of 2008, exonerating the appellant-insurer from the liability of paying compensation to the respondents. If any amount is already deposited by the appellant-insurer towards compensation, the same is permitted to be recovered from the owner of the vehicle. No order as to costs.

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

JUSTICE G. SHYAM PRASAD

22.09.2017.
Msr

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M.A.C.M.A. No.1571 of 2010

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