

THE HON' BLE SRI JUSTICE M. S. K. JAISWAL

M.A.C.M.A .No. 1114 of 2010

JUDGMENT:

This Appeal is filed by the Appellant – Insurance Company, questioning the judgment and decree, dated 11.06.2009 in MVOP.No. 28 of 2008 on the file of the Motor Accidents Claims Tribunal-Cum-III Additional District Judge, Tirupathi, by and under which the learned Tribunal has awarded a total compensation of Rs.2,00,000/- for the death of the deceased-boy, who was aged about 8 years and who met with an accident involving a motor cycle, bearing No.TN.20AD.3220, belonging to and driven by the first respondent.

2. The brief facts of the case are that on 29.06.2017 at about 6.00 p.m., while PW.2 and the deceased boy were going on foot near Vinayaka Temple, Chennri village, Sathyavedu, the offending motorcycle, owned and driven by the 1st Respondent came at a high speed in a rash and negligent manner, dashed the deceased, as a result of which, the deceased fell down and received injuries, and while shifting to the hospital, he succumbed to injuries at about 8.30 p.m.

3. The contention of the learned counsel for the Insurance Company was that the driver of the offending vehicle, who happens to be the owner and driver of the vehicle, did not possess a valid licence at the time of accident and hence the Insurance Company is not liable to pay any compensation.

4. On behalf of the claimants, PWs.1 and 2 were examined, and Exhibits A.1 to A.5 were marked; and on behalf of the respondents,

RWs. 1 to 3 were examined, and Ex.B.1 was marked. RW-2 is the 1st respondent in the O.P., and happens to be the owner and driver of the offending vehicle. RW-3 is the employee of RTA Office. RW-2, the 1st respondent deposed that he obtained a driving licence but he lost it, and in the cross-examination, he admits that he has not taken any steps to obtain duplicate copy of driving licence.

5. The learned counsel for the Insurance Company submits that though the factum of the accident having taken place, and the involvement of the vehicle is not disputed, but the fact remains that the 1st respondent in the O.P., who was the owner of the crime vehicle was not possessing any valid licence and hence the Insurance Company is not responsible and not liable to pay any compensation to the deceased. The Tribunal, having taken note of the said fact, has directed the Insurance Company to pay the compensation to the deceased first, and then recover the same from the insured-owner of the vehicle. The learned counsel for the appellant-Insurance Company submits that the said direction is not proper for the reason that the Insured himself has violated the terms of the policy, and therefore, there cannot be any direction to the Insurance Company first to pay the compensation awarded and later recover the same from the Insured.

6. The learned counsel appearing for the claimants submits that RW-2, who was the owner and rider of the vehicle, was working as Head Constable, aged about 47 years, and he gave evidence stating that he had a driving licence, but he lost it, and after the accident he did not obtain either duplicate of the same or a fresh one. The

learned counsel however submits that the Tribunal has properly considered the material on record and directed the Insurance Company to pay the awarded amount and subsequently recover the same from the 1st respondent/ owner.

7. Heard the learned counsel appearing for both the parties and considered the material on record.

8. The learned counsel appearing for the Insurance Company has mainly objected about the direction of the Tribunal to pay the claimants first and recover the same from the owner of the vehicle.

If the insured, who obtains a policy from Insurance Company violates the terms of the policy, he may not be expected to be indemnified by the Company. However, in a given set of circumstances, and in view of the financial position and the pain and suffering by the injured, the Courts have been directing the Insurance company, firstly to pay the compensation to the victims/ claimants and then recover from the insured, in view of the breach of terms of the contract between the Insurance Company and the Insured. In the instant case, the Insurance Company examined RW-2, who was the owner and insured, in support of its case. On being summoned, RW-2 appeared before the Court and gave evidence stating that on the date of accident, he has a valid driving licence, which he obtained in 1982 from RTA, Kanchipuram, and thereafter he was driving the motor cycle, but at the time of accident, he lost the same.

9. As already stated above, RW-2 was working as Head Constable in Police Department and aged about 47 years. Therefore, I see no

reason for disbelieving his evidence that at the time of accident he did possess a valid driving licence to drive two wheeler, and he lost the same subsequently, and later he did not obtain any duplicate or fresh licence, for the reason that after the accident he became unfit to drive any two wheelers. The oral evidence on record is clinching to the effect that the Insured cannot be said to have violated the terms of the insurance policy. However, since the licence was not produced, the Tribunal felt it necessary to give a direction to the Insurance Company to indemnify the claimants and subsequently got indemnified from the 1st Respondent.

10. In view of the above, and after a careful perusal of the entire evidence on record, I do not see any reason to differ from the view taken by the learned Tribunal.

11. Insofar as the quantum of compensation is concerned, the deceased was aged about 8 years, and therefore, notional amounts are to be taken into consideration and the Tribunal has awarded only Rs.2,00,000/-, which cannot be in any way said to be excessive or exorbitant. I do not see any merit in the appeal, which is liable to be dismissed.

12. Accordingly, the appeal is dismissed, confirming the judgment and decree under appeal awarding compensation. There shall be no order as to costs. Consequently, the pending miscellaneous petitions, if any, shall stand closed.

M.S.K.JAISWAL, J

Date: 15.06.2017

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Dt. 15..06..2017