THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 1817 of 2010

JUDGMENT:

Against the award dated 30.7.2010 passed by the III-Addl. District Judge, (FTC), Nizamabad in OP No. 325 of 2004 making the National Insurance Company Limited (2nd respondent in the aforementioned OP) liable to pay the compensation of Rs.80,000/- together with interest @ 7.5% per annum and costs thereon along with the owner of crime lorry bearing No. AEW 3317, the present appeal is filed the National Insurance Company Limited.

The parties will hereinafter be referred to as 'the petitioner' and 'the respondents' as they are arrayed in the aforementioned OP.

The facts which led the appellant to file the present appeal are briefly stated as under,

In respect of the claim laid by R. Vasanth Rao, the petitioner in OP No. 325 of 2004 for compensation of Rs.3.00 lakhs regarding the injuries he received in the accident dated 9.1.2004 while travelling in a lorry bearing No. AEW 3317 belonging to K. Babu, the 2nd respondent, as its labourer for shifting of cow-dung, the Tribunal had awarded compensation of Rs.80,000/- holding that due to the negligent driving of the aforementioned lorry by its driver, the lorry hit a scooterist and later turtled, and on account of the same, the petitioner received fracture injuries to his right leg, jaw, ribs and right eye etc. The Tribunal made the appellant and the owner of the crime lorry jointly and severally liable to pay such compensation to the petitioner together with interest @ 7.5% per annum from the date of filing of the claim petition till realization and costs thereon. Being aggrieved by the award passed by the Tribunal making the appellant liable to pay the said compensation, the present appeal is filed by it.

The insurance company disowns its liability to pay compensation on the ground that no premium is paid by the owner of the crime lorry covering the risk of labourers carried in his vehicle. It is also contended by the insurance company that the petitioner travelled in the crime lorry as an unauthorized passenger and therefore the Tribunal ought not to have fastened the liability as against it. These being the main grounds urged by the insurance company, the only issue which this Court needs to answer is, "***whether the Tribunal is justified in fastening the liability as against the appellant/insurance company to pay the compensation to the petitioner along with owner of the crime lorry***?"

I have perused the award impugned in the present appeal. The Tribunal has placed reliance on the evidence of P.W.1, the petitioner and also Exs.A1 to A13 and passed the award granting compensation of Rs.80,000/- to the petitioner in respect of the injuries received by him in the accident.

Ex.B1, insurance policy copy is relied upon by the Court below to make the insurance company liable to pay the compensation to the petitioner along with the owner of the crime lorry jointly and severally.

As it is the main contention of the appellant/insurance company that the petitioner travelled in the crime lorry as an unauthorized passenger, this Court has verified the FIR wherefrom it is understood that the petitioner travelled in the crime lorry at the relevant point of time as a labourer, but not as an unauthorized passenger as contended by the appellant/insurance company.

The insurance policy copy also indicates that the premium covering the risk of driver and two employees is paid. The learned standing counsel appearing for the appellant/insurance company has tried to impress this Court that even if the contents of FIR are taken to be correct, the petitioner was a labourer, but not the employee of the 1st respondent and since no premium was paid covering the risk of labourer by the owner of the crime lorry, the insurance company would have been absolved of its liability to pay compensation.

It is clear from the contents of Ex.B1, the insurance policy that premium is paid covering the risk of driver and two employees. The insurance company, though has taken the stand that a labourer is a different from an employee, it has failed to distinguish the labourer and employee. As the insurance policy-Ex.B1 indicates that covering the risk of two employees premium is paid by the owner of the crime lorry and the policy has got the enforceable effect as on the date of accident, the insurance company, which has agreed to indemnify the liability of owner of crime lorry in case of risk to the life or injuries to two employees, cannot escape from its liability to pay the compensation.

In view of my above held discussion, the insurance company's contention that the Tribunal has erred in fastening the liability as against it to pay the compensation to the petitioner along with vehicle owner, is hereby rejected and the appeal filed by it against the award passed by the Tribunal deserves to be dismissed.

In the result, the appeal filed by the insurance company against the award dated 30.7.2010 passed by the III-Addl. District Judge, (FTC), Nizamabad in OP No. 325 of 2004 fails and the same is hereby dismissed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt.12.12.2018
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