HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.547 of 2006

JUDGMENT:

This appeal is preferred challenging the order dated 18.10.2005 in M.V.O.P.No.92 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum- Additional District Judge, Hindupur (for short, 'the Tribunal'), whereby and whereunder, the Tribunal has awarded a sum of Rs.2,10,000/- towards compensation to the wife and children of the deceased.

2. The appellant herein is the 2nd respondent before the Tribunal, which is the National Insurance Company Limited, by its Branch Manager, Hindupur, Anantapur District (for short, 'the Insurance Company').

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The fact-situation occurring in the instant case is that the deceased along with some labourers went in tractor bearing No.AP 02/V-3670 and Trolley No.3671 as labourers to unload the bricks at Chowlur and while going so, the driver of the Tractor drove the same in a rash and negligent manner at high speed, as a result, when the vehicle reached near Pennar river at Chowlur, the Tractor turned turtle as its trolley's ring was cut, and the deceased who was sitting on

the brick load fell down and the bricks fell upon his body and died on the spot. Then the persons present there removed the bricks and found the deceased died due to severe injuries. The Police, Hindupur Rural registered a case against the driver of the Tractor. It is submitted that the claimants have been deprived of their livelihood on account of the death of their sole earning family member who was earning a sum of Rs.3,000/- per month. The 1st respondent is the owner of the Tractor and the 2nd respondent is the insurer of the offending vehicle. Thus, the claimants prayed to grant a sum of Rs.3,00,000/- as compensation.

5. The 1st respondent, remained exparte and the 2nd respondent filed counter denying the accident and liability. It is also contended that the driver of the Tractor had no valid driving licence and the vehicle does not have proper registration, permit or fitness to ply on the road and the petitioners have not furnished correct policy numbers.

6. The Tribunal, based on the pleadings, framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the 1st petitioner, who is wife of the deceased, examined as P.W.1 and petitioners 2 and 3, who are children of the deceased are examined as PWs.2 and 3 and Exs.A.1 and A.2 were marked, whereas, on behalf of the 2nd respondent-Insurance Company, RWs.1 and 2 were examined and Exs.B1, X1 and X2 were marked.

7. The Tribunal, basing on the evidence of PW1 and Exs.A-1-Certified copy of FIR and A-2-Certified copy of Post Mortem, held that due to rash and negligent driving of the driver of the Tractor, the accident had occurred and held it in favour of the petitioners.

8. On issue No.2, taking the age of the deceased as 40 years, applied multiplier '12.5' by relying on the Judgment in *Bhagavan Das v. Mohammad Areef, 1987(2) ALT 137* and taking the income of the deceased at Rs.15,600/- per annum, awarded a sum of Rs.2,00,000/- towards loss of dependency besides granting a sum of Rs.10,000/- to the 1st petitioner towards consortium. Thus, a total sum of Rs.2,10,000/- was granted with interest at 5% per annum as compensation making the respondents 1 and 2 liable to the said amount with interest @ 5% per annum.

9. Aggrieved by the said award, Insurance Company preferred the instant appeal contending that though Insurance Policy for the offending vehicle was taken by registering the same for Agricultural Purpose, in the present case bricks are being transported in the crime vehicle, as such there is violation of policy conditions. He also submits that though the driver of the offending vehicle was having licence to drive only non transport vehicle, he drove of offending vehicle for transporting the bricks, which is also another violation of policy conditions. As such, the Tribunal erred in fastening liability on the Insurance Company-

Appellant. He further submits that atleast, the Tribunal would have given liberty to the Insurance Company/appellant to recover the amounts paid by it from the owner of the offending vehicle. In support of this contention he relied on the Judgment rendered by the Supreme Court in ***S.B.Sinha v. S.Sirpurkar (AIR 2009 Supreme Court 2151).***

10. In this case it is to be seen that the Tribunal after considering the evidence of RWs.1 and 2 and the evidence of PWs.1 to 3 and Exs.A1 and A2, came to the conclusion that the bricks were being transported as part of agricultural activity and that the labourers who are third parties cannot be deprived of the compensation arising out of such legal liability arising out of the accident caused to the labourers due to the rash and negligent driving of the driver of the vehicle.

11. A reading of the evidence goes to show that the claimants did not lead any evidence to show that the bricks were being carried for using them for agricultural activity. No doubt, transportation of bricks also may be part of agricultural activity. But, the evidence regarding the same is not very clear. More so, the driver of the offending vehicle is having licence only to drive non-transport vehicle.

12. The issue as to whether the insurance company is liable to pay any compensation, where the terms and conditions of

policy are violated came up for consideration before the Apex Court in **S.B.Sinha's case,** the Apex Court held as follows :

> "However, in this case, the finding of fact arrived at that the vehicle in question was not proved to be a goods vehicle is not correct. The Regional Transport Officer, in his deposition, stated that the vehicle in question was a goods vehicle.
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> 18. From the discussion made hereinbefore, it is thus, evident that it is proved that respondent No.6 did not hold a valid and effective driving licence for driving a goods vehicle, Breach of conditions of the insurance is, therefore, apparent on the face of the records.
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> 19. By an order dated 10.07.2008, the insurance company was directed to deposit 50% of the awarded amount. In this view of the matter, we are of the opinion that interest of justice, would be subserved if we, in exercise of our jurisdiction under Article 142 of the Constitution while directing the insurance company to deposit the balance amount before the Tribunal with liberty to the claimants to withdraw the same give right to the appellant to recover the said amount from the owner and the drive of the vehicle being respondent Nos.6 and 7."

13. Therefore, the absolute liability fastened on the insurance company can be modified to that of initial liability to pay the compensation amount, initially, determined by the Tribunal, and recover the same from respondent No.2 – owner of the Auto.

14. This Court by order dated 16.03.2006, while granting interim order, directed the Insurance Company to pay half of the awarded amount to the claimants and also given liberty to the claimants to withdraw their respective shares.

15. In view of the aforesaid facts and circumstances, since it is evident that there is breach of conditions of insurance policy, the Appellant-The National Insurance Company Limited, being the insurer of the offending vehicle which was found in causing accident due to negligence of its driver, is directed to first pay the balance 50% of the amount determined by the Tribunal to the respondents 1 to 5 / claimants and then recover the said amount from the owner of the offending vehicle-Respondent No.6 herein. To that extent, the appeal is allowed modifying the order and decree passed by the Tribunal. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A.RAJASHEKER REDDY, J

09.03.2018
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