HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A.No.181 of 2006

JUDGMENT:

The present appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the New India Assurance Company Limited, which is respondent No.2 in O.P.No.178 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum- Additional District Judge, Adilabad (for short, 'the Tribunal'), aggrieved by the order and decree, dated 05-05-2003, passed in the said original petition, for granting compensation of Rs.4,50,000/- for fixing the liability on the appellant herein along with respondent No.1.

Perused the order under challenge and the evidence on record.

By the order under challenge, the Tribunal granted compensation of Rs.4,50,000/-- for the death of one Khaisar Moinuddin Khan. The claimants, who are the legal representatives of the deceased, filed the claim petition stating that on 23-05-98 said Khaisar Moinuddin Khan along with respondent No.1 after completing their work at Nirmal, they were proceeding to Echoda from Nirmal in a jeep bearing No.AP-1-5539 owned by Khaisar Moinuddin Khan himself and when the said jeep reached near Boath X-Road. All of a sudden it lost control and dashed to teak tree. Due to which said Moinuddin Khan sustained fracture of skull, ribs and other grievous bleeding injuries on his person. Immediately, said Moinuddin Khan was shifted to Government hospital, Adilabad and thereafter he succumbed to injuries, while undergoing treatment at Nagpur Medical College Hospital, Nagpur on 24-05-2008. The deceased used to earn Rs.1,25,000/- per annum on agriculture and business. A case in Cr.No.36/98 was registered for the offences punishable under Sections 304-A, 337 and 338 IPC by the police. Respondent No.1 is the driver of the jeep involved in the accident and respondent No.2 is the insurer.

The 1st respondent remained exparte and the 2nd respondent/Insurance Company filed counter and denied the occurrence of the accident, involvement of the vehicle and the deceased, his age, income and avocation and injuries sustained by him. It is also denied that a valid and subsisting driving licence holder drove the vehicle in question at the time of accident. It is denied that the vehicle in question was insured at the time of accident with the 2nd respondent-Insurance Company. The compensation claimed by the petitioners is excessive and exorbitant.

During the trial, Pws 1 and 2 were examined and Exs A-1 to A-8 were marked on behalf of petitioners and RW.1 was examined and Ex.B.1 is marked on behalf of respondents. Basing on the said evidence and Exs A-1 to A-8, the Tribunal granted compensation of Rs.4,50,000/- against the appellant and the 1st respondent jointly and severally holding that the respondents therein failed to establish that the policy does not cover the risk of the owner, though they have taken stand that the policy did not cover the personal accident policy. Aggrieved by the same, the present appeal is filed by respondent-Insurance Company disputing its liability.

Sri C.Prakash Reddy, learned counsel for the appellant contends that deceased himself was the owner of the vehicle, which was involved in the accident and that though insurance company is not liable, the Tribunal passed award against the appellant. He further submits that the policy does not cover the risk of the owner fixing the liability and there is no extra premium paid towards personal coverage in respect of owner of the crime vehicle and the respondent-Insurance company is mulcted with liability. In support of his contentions, he relied on the judgment of **Dhanraj v. New India Assurance Company Limited**[1].

On the other hand, learned counsel for the respondents 2 to 8 submits though deceased was owner of the crime vehicle, Insurance company is liable to pay compensation and deceased was not driving the vehicle by relying on the judgment of **Sohel Sardar Khan v. S.Rama Pathi Rao**[2] and also circular dated 03-12-2009 issued by Insurance Regulatory and Development Authority.

[1] (2004) 8 Supreme Court Cases 553
[2] 2012(1) ALT 812 (D.B.)

It is to be seen that the only point that arises for consideration is, whether the appellant is liable for payment of compensation?

In the judgment relied on by learned counsel for the appellant cited (1 supra), the Apex Court while considering the similar issue held as follows:

> " We have seen the Policy. It is a comprehensive policy. The question that arises is whether a comprehensive Policy would cover the risk of injury to the owner of the vehicle also. Section 147 of the Motor Vehicles Act, 1988 reads as follows:-
>
> "147. Requirements of policies and limits of liability.┤ (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which┤
>
> (a) is issued by a person who is an authorized insurer; or
>
> (b) insurer the person or classes of persons specified in the policy to the extent specified in sub-section (2) ┬
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required┤

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of or bodily injury to, any such employee┤

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation: For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:--

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier."

Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

In the case of Oriental Insurance Co. Ltd. Vs. Sunita Rathi & Ors. [1998 ACJ 121] it has been held that the liability of an Insurance Company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the Insurance Company has no liability also.

In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4,989/- paid under the heading "Own damage" is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case, there is no such insurance."

In the present case also, no personal accident insurance coverage was taken in respect of the deceased. Though deceased was not driving the vehicle, he is the owner of the vehicle and the said fact is also not disputed. The judgment cited (2 supra) relied on by learned counsel for the respondents 2 to 8 has no application to the facts of the present case, since it is a case where the claim was laid in respect of a person travelling in the vehicle and deceased was not owner in that case. The Division Bench of this Court while applying circular, relied on by learned counsel for the respondents therein, dated 16-11-2009 held that the Insurance Company was liable. But the facts in the present case are different, as the owner of the vehicle himself travelling in the crime vehicle.

The judgment (1 supra) relied on by the learned counsel for the appellant applies in all force and facts in the present case and the facts before the Apex Court are similar.

In view of the same, the award of the Tribunal is modified holding that the appellant-Insurance Company is not liable to pay the compensation to the extent of its liability.

Accordingly, the appeal is allowed to the extent indicated above. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A.RAJASHEKER REDDY, J

02-02-2018
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