HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.863 of 2012

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act") is preferred by the appellant – Bajaj Allianz General Insurance Company Limited, challenging the judgment and decree dated 03.10.2011 in M.V.O.P.No.55 of 2010 passed by the II Additional District Judge-cum-Motor Accidents Claims Tribunal, Srikakulam District (for brevity "the Tribunal").

2. The appellant – Bajaj Allianz General Insurance Company Limited herein is respondent No.3, respondent Nos.1 and 2 herein are the petitioners, respondent Nos.3 and 4 herein, who are driver and owner, respectively, of the crime Tractor/Tanker bearing No.AP30-U-1351 and 1352, are respondent Nos.1 and 2 in M.V.O.P.No.55 of 2010. For the sake of convenience, the parties are referred to as they were arrayed in the claim petition before the Tribunal.

3. The brief facts of the case are that, while the petitioners' son – Naveen, who was aged about 8 years at the time of his accidental death on 27.05.2009, was following a Tractor/Tanker bearing No.AP30-U-1351 and 1352, that while crossing a bund, the tractor came back as 1st respondent – driver of the tractor failed to control the same

and ran over Naveen, as a result of which he sustained injuries and died on the spot, that a case was registered against 1st respondent – driver, that the deceased was the only issue to the petitioners and due to his sudden death they suffered lot of pain and agony, that the petitioners filed the aforesaid claim petition in M.V.O.P.No.55 of 2010 under Section 166 of the Act against the driver, owner and insurer of the crime Tractor/Tanker claiming compensation of Rs.3,00,000/- for the death of their only son - Naveen in the accident.

4. Before the Tribunal, respondent Nos.1 and 2 remained exparte. Respondent No.3-insurer filed written statement pleading that the driver of the Tractor/Tanker had no valid driving licence to drive the crime vehicle and hence the Insurance Company is not liable to pay compensation and that the quantum of compensation claimed is also excessive.

5. On consideration of the evidence of witnesses PWs.1 and 2 and documentary evidence under Exs.A.1 to A.5 adduced on behalf of the petitioners; and also the evidence of RWs.1 and 2 and documentary evidence under Exs.B.1 to B.8 adduced on behalf of respondent No.3-insurer, by the aforesaid judgment and decree dated 03.10.2011, the Tribunal had partly allowed the claim petition awarding compensation of Rs.2,00,000/- to the petitioners payable by respondent Nos.1 to 3 jointly and severally with interest at

9% per annum from the date of the petition with a further direction that the said amount shall be paid within 3 months from the date of decree or within 30 days from the date of receipt of certified copy of the decree, whichever is earlier, failing which interest shall be paid at 12% per annum on the aggregate of principal and interest accrued upto that date, till realisation. It was further directed that out of the total compensation, the petitioners are awarded a sum of Rs.1,00,000/- each and out of the total compensation awarded to the petitioners, interest accrued thereon (+) Rs.25,000/- each shall be paid to the petitioners and balance shall be kept in a fixed deposit for a period of 3 years and shall be paid to them after its maturity and dismissed the rest of the claim. Aggrieved by the said judgment and decree passed by the Tribunal in fixing liability against it, the appellant-insurer has filed the present appeal.

6. Heard the arguments of Sri A. Ramakrishna Reddy, learned Standing Counsel for the appellant-insurer and Sri A. Ravi Shankar, learned counsel for respondent Nos.1 and 2-petitioners is not present. Perused the material on record, including the impugned judgment passed by the Tribunal.

7. Learned Standing Counsel for the appellant-insurer mainly contended that the driver of the crime Tractor/Tanker is not having valid and effective driving licence as on the date of accident and, therefore, the appellant-insurer is not liable

to pay compensation to the respondents-petitioners as there is violation of the terms and conditions of the Insurance Policy. It is also contended that as per Ex.A.5 - Charge sheet, the 1st respondent-driver was charged under Section 3 r/w. Section 181 of the Act for not possessing valid driving licence at the time of accident and even on that ground the Tribunal ought to have exonerated the appellant-insurer from the liability.

8. In the light of the arguments advanced by the learned Standing Counsel for the appellant-insurer, it is obvious that the driver of the crime Tractor/Tanker is not having valid driving licence to drive the said vehicle as on the date of accident. It is pertinent to note that the police have filed charge sheet against the driver of the crime Tractor/Tanker charging him under Section 3 r/w. Section 181 of the Act for not possessing driving licence. In this connection, it is apt to refer Section 181 of the Act, which reads as under:

> "**181. Driving vehicles in contravention of Section 3 or Section 4 :-** Whoever drives a motor vehicle in contravention of Section 3 or Section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

9. It is also pertinent to note that in order to hold that the insurer is jointly and severally liable to pay compensation along with driver and owner of the crime Tractor/Tanker, the Tribunal in para-7 of its judgment held as under:

> "….. Just because trailer is converted into tanker for carrying water, it cannot be said that it was converted into commercial purpose or it amounts to violation of terms and conditions of the policy. On the other hand, Ex.B-2 shows that risk was covered for commercial tractors, as such the evidence of R.W.1 is not acceptable. As R-3 failed to prove that person who drove the tractor has no driving licence and as there is no breach of terms and conditions of the insurance policy R-3 is also jointly and severally liable to pay compensation along with R-1 and R-2."

10. From the above, it is clear that though the appellant-insurer was able to establish that the driver of the crime vehicle was not possessing valid driving licence as on the date of accident, it could not establish that the owner of the said vehicle had either wilfully allowed the driver, who was not having licence, to drive the vehicle or failed to exercise reasonable care to disown its liability.

11. In the instant case, though the appellant-insurer had contended that the driver of the crime Tractor/Tanker was not having valid driving licence as on the date of accident, it did not produce any evidence to show that the owner had entrusted the crime Tractor/Trailor to the driver knowing fully well that the driver is not having valid driving licence. Therefore, it is a fit case where pay and recovery can be ordered.

12. In view of the fact that the Motor Vehicles Act is a beneficial legislation, the rights of the third parties have to be protected and that the violation of the terms and conditions of

the Insurance Policy cannot be a ground to disown the liability of the Insurance Company.

13. In the result, the appeal is allowed in part, modifying the award by directing the appellant-insurer to pay compensation as was awarded by the Tribunal to the petitioners, at the first instance, and recover the same from the owner of the crime Tractor/Tanker. No order as to costs.

14. Consequently, miscellaneous petitions, if any pending in this appeal shall stand closed.

GUDISEVA SHYAM PRASAD, J

27.04.2018.
Msr

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