HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A. No. 355 of 2006

ORDER :

This appeal is filed by the Insurance Company against the Judgment of the Motor Vehicle Accident Claims Tribunal-cum-Principal District Judge, East Godavari District, dated 20.09.2005 in O.P.No.497 of 2001, wherein the Tribunal granted an amount of Rs.2,87,000/- along with interest at the rate of 7.5% per annum, from the date of petition, till realization and costs, in favour of the respondents 1 to 3, who are claimants before the Tribunal, fixing the liability on the appellant as well as on the 4th respondent.

2. Brief facts which are necessary for disposal of the appeal are as follows:

For the sake of convenience, the parties hereinafter will be referred to as arrayed in the Original Petition. The petitioners filed petition under Section 166 of the Motor Vehicles Act for compensation of Rs.3,00,000/- on the ground that the 1st petitioner is the wife, the petitioners 2 and 3 are minor children of the deceased Inti Srinivas, aged 30 years and earning Rs.6,000/- by maintaining tractor as owner and in cultivation and that on 22.04.1996 at about 11.00 a.m, when the deceased was going on left side on drainage canal bund near Muggu bridge, the tractor bearing No.ADI 8246 came in a rash and negligent manner at high speed, without blowing horn from behind and dashed the deceased, who sustained injuries and that the deceased died on the way to hospital.

3. The 1st respondent did not file any written statement. The 2nd respondent filed counter denying the material allegations in the petition and contending that the insurance company is liable to pay compensation to third parties on behalf of owner of the vehicle but not for the death of the insured himself in the accident and that unless owner of the vehicle is liable, the insurance company is not liable to pay compensation and that this respondent is not liable to pay compensation and the deceased had wife only and also that the claim is excessive.

4. Basing on the above pleadings, the following issues were framed:

> 1. Whether the deceased Inti Srinivas, died in motor accident occurred on 22.04.1996 at about 11.00 a.m near the house of N.Satyavathi on the Korangi canal bund between Jonnada and Alamuru due to the rash and negligent driving of Tractor bearing No.ADI 8246 by the 1st respondent?
> 2. Whether the petitioners being the dependants of the deceased Inti Srinivas, are entitled to the compensation of Rs.3,00,000/- with interest thereon from all the respondents with joint and several liability?
> 3. To what relief?

5. The 2nd petitioner examined himself as P.W.1 and also examined P.W.2 and marked Exs.A1 and A2 on behalf of the petitioners. Ex.B1 was marked on behalf of the 2nd respondent.

6. After considering both the oral and documentary evidence adduced on either side, the Tribunal granted compensation of Rs.2,87,000/- fixing the liability on the respondents 1 and 2, who are the driver and the insurance company. Aggrieved by the same, the insurance company preferred the present appeal.

7. Heard learned counsel for the appellant, who submits that Ex.B1 policy does not cover the risk towards the owner of

the vehicle, though the owner of the vehicle involved in the accident Since the deceased is the owner of the offending vehicle under Ex.B1 policy, he is not covered under said policy and that in the absence of the same, fixing the liability on the insurance company is erroneous. He submits that unless the liability is fixed on the insured, insurer is not liable to pay the compensation. He submits that in the instant case, the deceased is the owner of the offending vehicle, as such, insurance company is not liable to pay any compensation to the claimants. In support of his contention, he relied on the judgment reported in **Oriental insurance Co. Ltd., v. Smt. Jhuma Saha and others[1].**

8. On the other hand, learned counsel for the respondents 1 to 3 submits that since the owner of the offending vehicle is not driving the offending vehicle and the offending vehicle being driven by its driver i.e., 4th respondent, hit the deceased owner. As such, he is a third party and the judgment cited by the learned counsel for the appellant is not applicable. He submits that in the judgment cited by the learned counsel for the appellant, the owner was driving the offending vehicle. He submits that even though the deceased being owner travelled in the offending vehicle as passenger, the insurance company is liable to pay compensation to the claimants. In support of his contention, he relied on the judgment reported in **New India Assurance Co. Ltd., v. Doredla Satyanarayana and others[2].**

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[1] AIR 2007 Supreme Court 1054 (1)
[2] 1998 ACJ 952

9. In this case, the only point for consideration is whether the Insurance company/appellant is liable to pay compensation to the claimants when the deceased, being the owner of the offending vehicle, died in the accident.

While answering this issue, the Tribunal in the issue No.2 observed as follows:

> "ISSUE NO:2. The 1st respondent is driver, the deceased is owner and the 2nd respondent is insurer of the accident tractor. Ex.B1 is certificate of insurance. The certificate of insurance only gives particulars of insured vehicle and premium paid. Nature of insurance policy issued and its details do not find place in Ex.B1. It is not known who are the persons covered by the said insurance. There is nothing in Ex.B1 to indicate that it is only a third party insurance company. Assuming for a moment that Ex.B1 is a third party insurance policy, it has to be seen whether death of the deceased herein is covered by the policy. The tractor being driven by the 1st respondent came from behind the deceased and hit him when he was going as a pedestrian on canal bund. Though the deceased happened to be insured himself under Ex.B1 in respect of the accident vehicle, it cannot be said that his death is not covered by the said policy. There can be no doubt or dispute that for rash and negligent driving of the vehicle by the 1st respondent, his employer who is the deceased is liable to pay compensation by way of vicarious liability. Primary liability is on the 1st respondent himself. For the death of the deceased, the 1st respondent is liable to pay compensation to the petitioners. Under law of Torts under the head of vicarious liability, the 1st respondent's is liability is taken over by his employer who is the deceased himself. Further, under the law of contract of indemnity, the 2nd respondent as insurer takes over liability of the owner in view of Ex.B1 insurance policy. Thus, in this case the deceased has got two roles, one as owner of the tractor and employer of the 1st respondent, and secondly as the victim in the accident. These two roles of the deceased are quite different and distinct from each other. In that view of the mater, I do not agree with the 2nd respondent's contention that the insured will not become a third party."

Admittedly, deceased is the owner of the offending vehicle and the 4th respondent is the driver of the offending vehicle and the appellant is the 2nd respondent being the insurer of the offending vehicle before the Tribunal. There is no dispute with regard to issuance of Ex.B1 policy as well as the occurrence of accident involving the offending vehicle. The Tribunal while considering Ex.B1 held that the same does not provide any information with regard to the persons covered under said policy and the Tribunal also came to the conclusion that the insured will become a third party. The Tribunal also did not accept the contention of the insurance company/appellant that the insured/deceased will not be regarded as a third party.

10. It is to be seen that whether the owner is driving the offending vehicle is not the criterion to become a third party to the insurance. Insured is a party to the insurance policy and the contract of insurance is between the appellant/insurance company and the insured himself. Admittedly as per Ex.B1 policy, the deceased is party to the contract, as such, it cannot be said that the deceased is a third party to policy. If that be so, whether Ex.B1 covers the risk of owner of the vehicle is the point that falls for consideration. The Tribunal observed that in Ex.B1 policy, nowhere it is mentioned who are the persons covered by the said policy. Unless the insurance policy gives information about the persons who are covered under said policy, the insurance company cannot be mulcated with the liability to pay compensation in respect of death of the deceased, who is none other than the insured of the offending vehicle. In **Oriental insurance Co. Ltd., v. Smt. Jhuma Saha and others (supra),** the question before the Hon'ble Apex Court was as follows:

> "8. Before us a short question has been raised by the learned counsel appearing on behalf of the appellant stating that in view of Section 147 of the Motor Vehicles Act, 1988, the jurisdiction of the Tribunal was confined to a third party claim and, thus, the impugned judgment cannot be sustained."

While answering the said issue, the Hon'ble Supreme Court held as follows:

> 11. Liability of the insurer-Company is to the extent of indemnification of the insured against the respondent or a injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicle Act, the question of the insurer being liable to indemnify insured, therefore, does not arise.
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> 12. In Dhanraj v. New India Assurance Co. Ltd. & Anr., [2004] 8 SCC 553, it is stated as follows :
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> "8. 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 authorised 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.
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> 10. 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. 4989 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 not such insurance."
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> 13. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case.
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> 14. In that view of the matter, the impugned judgment cannot be sustained. The appeal is allowed.

In aforesaid judgment, the Hon'ble Supreme Court almost dealt with the similar issue and allowed the appeal of the insurance company holding that it is not liable to pay compensation. Though the Tribunal relied on judgment of the Division Bench of this Court in **New India Assurance Co. Ltd., v. Doredla Satyanarayana and others (supra)** fixing the liability on the appellant/ insurance company, in view of the judgment of Hon'ble Apex Court, the findings of the Tribunal to the extent of liability to pay compensation by the insurance company is liable to be set aside and accordingly set aside.

Accordingly, the appeal is allowed to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this MACMA shall stand closed.

A.RAJASHEKER REDDY, J

09.02.2018.
KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A. No.355 OF 2006

Date: 09-02-2018

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