HONOURABLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A. No.1178 of 2008

Judgment:

Against the Award dated:25.01.2008 in O.P. No.906 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-District Court, Vizianagaram, the present Appeal is filed by the Bajaj Allianz General Insurance Company Limited, Visakhapatnam who has been arrayed as respondent No.3 in the aforementioned O.P.

2. The factual background of the case is briefly stated as follows :

1st petitioner is the son, and petitioners 2 and 3 are the daughters of the deceased Nadupuri Pydithalli who died in road accident on 11.8.2004, at the age of 48 years. The respondents 1 to 3 are the petitioners in O.P. No.906 of 2004 and that the appellant herein is respondent No.3.

3. The parties herein after will be referred as 'petitioners' and 'respondents' as they are arrayed in O.P. No.906/2004.

It is asserted by the petitioners that on 11.8.2004 while the deceased - Nadupuri Pydithalli was proceeding towards Phoolbagh colony from Chinathamarapalli by walk, when she reached near water tank of Kothapeta of Vizianagaram, she was hit by TVS Moped bearing No.AP-35D-5664 driven by respondent No.1-Manthri Rajinaidu, in rash and negligent manner and as a result of it, she received multiple grievous injuries all over the body and was taken to K.G. Hospital, Visakhapatnam, for the purpose of treatment and there she succumbed to injuries received in the aforementioned accident. As the accident occurred only due to rash and negligent driving of TVS Moped bearing No.AP-35D-5664 by the 1st respondent. Traffic police of Vizianagaram registered a case against him in Crime No.83/2004 under section 304-A IPC. Therefore, the petitioners laid the claim for compensation of Rs.2.00 lakhs against the rider, owner and insurer of the TVS Moped bearing No.AP-35D-5664.

3. The petitioners, in proof of their contention, examined the 1st petitioner as PW.1, and the 2nd petitioner who was an eye witness to the accident as PW.2. The rider and owner of the TVS Moped bearing No.AP-35D-5664 remained exparte and that the case filed against them was not contested by them. It was only the respondent No.3- viz., Bajaj Allianz General Insurance Company contested the case filed by the petitioners.

The contention of the respondent No.3 (appellant herein) was that the 1st respondent who drove the TVS Moped bearing No.AP-35D-5664, at the relevant point of time had no valid and that effective driving license, and that the terms and conditions of the policy were breached by the respondent No.2 who handed over his TVS Moped bearing No.AP-35D-5664 to the respondent No.1 knowing fully well that he had no license to drive TVS Moped. Therefore, 2nd respondent alone had to pay compensation to the petitioners but not this respondent. This was the only contention raised by respondent No.3-Insurance Company, to disown its liability.

The respondent No.3, in support of the above mentioned contention examined two witnesses. The Court below on appreciation of the evidence adduced by the petitioners and the respondent No.3-Insurance Company (appellant herein) passed the Award for a sum of Rs.1,00,000/- in favour of the petitioner Nos.1 and 2 and made the respondent No.3 to pay such amount to them along with respondent Nos.1 and 2 who were the rider and owner of the TVS Moped bearing No.AP-35D-5664 which caused the accident and gave liberty to it to recover the compensation amount paid by it from respondents 1 and 2 by initiating execution proceedings against them.

4. The respondent No.3-Insurance Company having been aggrieved by the award so passed, approached this Court by way of preferring the present Appeal. The respondent No.3 while making its submissions raised a contention that the rider of TVS Moped bearing No.AP-35D-5664 was not possessing valid driving license at that relevant point of time and proved the said fact by examining RWs.1 and 2. As the respondent No.2 handed over his TVS Moped to respondent No.1 knowing fully well that he had subsisting driving license, he violated the terms and conditions of the policy. The Court below instead of exonerating the respondent No.3 from its liability to pay compensation directed it to satisfy award, and then to initiate proceedings against the respondent No.1 and 2 for recovery of the compensation amount paid by it by filing the execution proceedings. Therefore, the said order of Tribunal was untenable and contrary to the evidence and established principles of law. Hence, they filed this present appeal seeking to set aside the award dated:25.1.2008 passed in O.P. No.906 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-District Court, Vizianagaram

5. Since no ground as such is raised by the respondent No.3-Insurance Company disputing quantum of compensation, and that the only dispute

raised is with regard to the liability fastened against it, the only question that arises for determination is, "*whether the Tribunal is correct in directing the appellant (respondent No.3) in O.P. No.906/2004 to satisfy the award first, and then to initiate proceedings of recovery by filing execution proceedings*.

6. Respondent No.3, the Insurance Company examined RWs.1 and 2 to prove its plea of defence, that the respondent No.1 was not authorized to drive a two wheeler. RW.2 was summoned by the Insurance Company to produce the driving license particulars of the respondent No.1. Exs.B3 and B4 documents produced by RW.2 would disclose that respondent No.1 was issued with license to drive light motor vehicle and it was valid upto 15.8.2005 from 26.7.2004. It was testified by RW.2 that two wheeler driving license is different from L.M.V driving license and that a person who possesses L.M.V driving license is not authorized to drive a two wheeler. The learned Trial Court on thorough appreciation of the evidence of RW.2 and Exs.B3 and B4 documents, and the observation made by the Division Bench of this Court in the case of **United India Insurance Company Ltd., Vs. Dulipalla Pramiladevi and others** reported in 2007 (4) ALD 495 wherein it was held by their Lordships at para Nos.83 and 84 as under:

> "83. We have construed and determined the scope of sub-clause (ii) of sub-section (2) (a) of Section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches or inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licencing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.
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> 84. On all pleas of beach of licencing conditions taken by the insurer, it would be open to the Tribunal to adjudicate the claim and decide inter se liability of the insurer and insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the Tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil court."

directed the appellant to satisfy the first by paying the awarded compensation to petitioners 1 and 2, then to initiate proceedings of execution as against respondents 1 and 2. Therefore, the award passed by the Tribunal in directing the appellant (Respondent No.3) to satisfy the award first, and then to initiate proceedings of recovery against respondents 1 and 2 by filing execution petition against them cannot be faulted.

7. As it is opined that the award of Tribunal is not suffering from patent illegality, the appeal filed by the Insurance Company fails and the same is hereby dismissed.

Pending Miscellaneous Petitions, if any, shall stand closed.

JUSTICE J. UMA DEVI

Dated: 12-10-2018
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HONOURABLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A. No.1178 of 2008

Dated12 -10-2018

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