THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2160 of 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the appellants-claimants aggrieved by the order dated 14.12.2004 in M.V.O.P.No.753 of 1998 on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge, Srikakulam (for short 'the Tribunal').

2. Heard the learned counsel for appellants-claimants, the learned counsel for 3rd respondent-Insurance Company and perused the record.

3. Learned counsel for the appellants-claimants would contend that though there is a valid policy, the Tribunal dismissed the claim against the respondent-insurer, which is erroneous. The Tribunal had granted meagre compensation and ultimately prayed to enhance the same and tagged the liability against the 3rd respondent-insurer.

4. Learned counsel for the 3rd respondent-insurer would contend that the offending bus bearing No.OAG 6333 was not insured. Therefore, the Tribunal rightly dismissed the claim against the respondent-insurer and awarded compensation against respondents 1 and 2-owner and driver of the offending vehicle. There is no infirmity in the impugned order. There are no circumstances to interfere with the compensation and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the point for determination is, whether the compensation assessed

can be enhanced and respondent No.3 is liable to pay the compensation?

6. There is no dispute with regard to the death of the deceased-Suggu Dharmarao in a road accident caused by bus bearing No.OAG 6333 driven by its driver in a rash and negligent manner on 17.09.1998.

7. During the pendency of appeal, the claim against respondent No.2-owner of the offending vehicle was dismissed on 05.07.2016 by this Court, which reads as follows:

> "The learned counsel for the appellant/s is permitted to take out personal notice to the un-served respondent/s by RPAD and file proof of service within four (04) weeks.
>
> In default, the appeal shall stand dismissed as against the respondents, who are not served, without further reference to the Court.
>
> It is made clear that wherever substituted service is necessary, the learned counsel for the appellant/s is permitted to file appropriate application seeking permission to take out substituted service.
>
> It is also made clear that wherever steps are necessary, the learned counsel for the appellant/s is directed to take steps to bring the LRs of deceased respondent, if any, on record within a period of four weeks from today, failing which the appeal shall stand dismissed against the said respondent without further reference to the Court.
>
> List after four (04) weeks."

Till today, no steps are taken to bring the legal representatives of respondent No.2 on record. It is evident from the record that the Tribunal held that offending vehicle bearing No.OAG 6333 caused the accident and the subject death. The Tribunal rightly assessed and granted a compensation of Rs.1,77,000/- with interest @ 6% per annum in favour of the appellants herein. It is just and proper. There are no circumstances to interfere with the same.

8. A perusal of Ex.B2-insurance policy and the entire evidence on record reveal that Ex.B2 relates to a Hero Honda vehicle and it does not relate to the offending bus bearing No.OAG 6333, which caused the subject accident and death. The policy particulars mentioned in Ex.B2 and in the claim petition are one and the same. The claimants failed to prove the insurance of the offending bus bearing No.OAG 6333 on the date of occurrence of the subject accident. The Tribunal had elaborately dealt with the aspect and absolved the respondent-insurance company from liability by assigning the reasons. There is no infirmity. No different view can be taken. The Tribunal ultimately directed the driver and owner of the offending bus bearing No.OAG 6333 to pay the compensation jointly and severally with interest @ 6% per annum. The finding is based on evidence on record. There are no circumstances to interfere with the impugned order. When there is no policy of insurance of offending vehicle, no liability can be tagged against the respondent-insurer.

9. In the result, the appeal is dismissed without costs.

Miscellaneous Petitions pending, if any, shall stand closed.

____

Dr. SHAMEEM AKTHER, J

3rd July, 2018
ssp