

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

M.A.C.M.A.Nos. 3582, 3583, 3586, 3602 of 2008 and 1937, 2144, 2205 and 3010 of 2009

COMMON ORDER:

Since all these appeals arise out of the same accident, which took place on 03.07.2004, they are disposed of by this common order. Taking M.A.C.M.A. 1937 of 2009 as a lead appeal, the following order is passed:

2. The claimants herein filed an application under Sections 140 and 163-A of the Motor Vehicles Act, claiming compensation of Rs.40,00,000/- in respect of the death of one Varanasi Ramachandra Murthy, who was a Professor in I.I.T., Kanpur, in an accident that took place on 03.07.2004 at about 5.30 a.m., near A.P.S.P. Camp Cross Road, Atamakuru Village, Mangalagiri Mandal, Guntur District.

3. The facts in the case disclose that on 03.07.2004, the claimants and the deceased were proceeding in the rental car of the 1st respondent, bearing No. AP7T 3819, to Vijayawada Railway Station from Bapatla, and on the way, near A.P.S.P. Camp on N.H.5, the driver drove the car at high speed, in a rash and negligent manner, lost control over the vehicle and dashed against

one of the pedestrians walking on the left side of the road. Thereafter, he hit a road side tree, resulting in injuries to the claimants and the deceased/injured. It is stated that they were taken to Soumya Apollo Hospital, Vijayawada, and thereafter, to Sateesh Nursing Home of Chilakaluripet. While undergoing treatment, the deceased/injured died on 11.07.2004. Having regard to the qualifications of the deceased, O.P.No. 1192 of 2005 came to be filed, seeking compensation of Rs.40,00,000/-.

4. The 1st respondent, who is alleged to be owner of the car at the time of the accident, did not file any written statement. The 2nd respondent-Insurance Company filed a written statement, denying the allegations made in the petition. It is further alleged on behalf of the Insurance Company that the accident occurred due to the rash and negligent driving of the driver of the 1st respondent, and since the driver was not having a valid driving licence, and as the insurance policy is an 'Act' policy, covering only liability, the Insurance Company is not liable to pay compensation. In other words, the plea of the Insurance Company appears to be that they are not liable to pay any amount towards compensation, since the vehicle was not having proper insurance.

5. Basing on the pleadings, the trial court framed the following issues:

- (1) Whether the deceased died in the accident caused due to rash and negligent driving of the car bearing No. AP7T 3819?

- (2) Whether the petitioners would be entitled for compensation? If so, what would be the just amount of compensation that the petitioners would be entitled and against whom?
- (3) To what relief?

6. During the course of the trial, PWs 1 to 4 were examined on behalf of the petitioners and Exs. X1 and X2 came to be marked, while the respondents examined R.Ws 1 and 2 and got marked Exs. B1 to B3.

7. After considering the oral and documentary evidence, the trial court awarded a sum of Rs.26,96,000/- (Rupees Twenty Six Lakhs and Ninety Six Thousand only) with interest @7%per annum from the date of petition till the date of realization. Challenging the same, M.A.C.M.A.No. 1937 of 2009 came to be filed.

8. The learned counsel for the Insurance Company mainly submits that the insurance policy, which is placed on record as Ex.P1 would show that it is an 'Act' policy covering only liability, and therefore, the inmates of the car are not liable to claim any compensation from the Insurance Company. If at all any claim is maintainable, he pleads that it would be only against the owner of the vehicle.

9. The learned counsel for the claimants would contend that the Insurance Company cannot escape from the liability of paying compensation, as the insurance policy was in existence as on the date of the accident. He would further contend that Insurance

Company being aware that the vehicle was registered as a taxi, in collusion with the owner of the vehicle, issued an 'Act' policy, which ought not to have been done. Hence, pleads that the argument of the learned counsel for the Insurance Company has no legs to stand.

10. At this stage, the learned counsel appearing on behalf of the 1st respondent-the owner of the vehicle would submit that long prior to the accident, the vehicle was sold, and in support of the same, he took us through Ex.X2, the 'B' Register extract, which would show that on 30.04.2004 itself, the vehicle, *prima facie*, appears to have been transferred in the name of one M.Vanisri, R/o. 6-1-135/4, Bapatla, Guntur District. In view of the above, the learned counsel for the 1st respondent would contend that the liability cannot be fastened on him.

11. From the above, it appears to be a case where the owner of the vehicle has to be heard to find out the circumstances under which the said vehicle was given on rent, and also as to whether it was being used as a commercial vehicle as on the date of the accident. If it is found that the vehicle was run as a commercial vehicle, the question would be whether the Insurance Company is liable to pay compensation or whether the Insurance Company shall pay the compensation first and then recover the same from the owner of the vehicle or the owner alone is liable to pay the compensation and what is the effect of 'Act policy' under the said circumstances?

12. Having regard to the above, we feel that the owner of the vehicle is required to be heard before deciding the issue. Hence, the order in challenge is set aside and the appeals are remanded back to the trial court to be decided in accordance with law, within a period of three months from the date of receipt of a copy of this order, after hearing the claimants, the Insurance Company and also the owners of the vehicle, i.e., the owner prior to 30.04.2004 and the alleged owner after 30.04.2004, so as to avoid inconsistent pleas, uninfluenced by the observations, if any, made in this order. The claimants are at liberty to raise all grounds before the trial court and also carry out necessary amendments, if any, in their application. Since the owner of the vehicle is represented before this court, we direct him to cooperate with the hearing of the case before the trial court adjudicating the dispute.

13. Accordingly, the appeals are disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

20.07.2018
DMG