

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.1463 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant-National Insurance Company Limited, challenging the order and decree dated 15.11.2006 in O.P.No.2822 of 2003 passed by the Motor Accidents Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad (for brevity "the Tribunal"), awarding compensation of Rs.4,21,000/- with interest @ 6% per annum as against the claim of Rs.10,00,000/- laid by them under Section 166 of the Act, for the death of the deceased – J. Tirupathi in a motor accident that occurred on 18.05.2003.

The appellant-insurer is respondent No.2, respondent Nos.1 to 3 are petitioners, who are wife and two minor children of the deceased, and respondent No.4 - owner of the offending Lorry bearing No.APQ-5877 is respondent No.1 in O.P.No.2822 of 2003. For the sake of convenience, the parties are referred to as they were arrayed in O.P.No.2822 of 2003 before the Tribunal.

The brief facts of the case are that, on 18.05.2003, while the deceased was proceeding from his house at Borabanda towards Yousufguda on his scooter bearing No.AP 9AB 3895,

at about 1.30 p.m., the offending lorry bearing No.APQ-5877 proceeding from Krishna Nagar towards Yousufguda dashed against the scooter on which the deceased was travelling, due to which the deceased died on the spot. The petitioners, being wife and 2 minor children, who are legal heirs of the deceased, have filed the above O.P. claiming compensation of Rs.10,00,000/- against respondent Nos.1 and 2, who are owner and insurer, respectively, of the offending Lorry. Respondent No.1-owner remained exparte and respondent No.2 – insurer filed counter denying its liability and also the quantum of compensation claimed. The Tribunal, on consideration of the evidence of witnesses PWs.1 and 2 and the documentary evidence under Exs.A.1 to A.10 adduced on behalf of the petitioners; and also the evidence of RW.1 and Exs.B.1 and B.2 adduced on behalf of respondent No.2-insurer, vide order and decree dated 15.11.2006, has allowed the O.P. in part awarding compensation of Rs.4,21,000/- with interest @ 6% per annum from the date of petition till the date of deposit with proportionate costs against respondent Nos.1 and 2 jointly and severally. Aggrieved by the said order and decree dated 15.11.2006 in O.P.No.2822 of 2003, the appellant-insurer has preferred the present appeal challenging the quantum of compensation and its liability.

Heard Sri R.K. Suri, learned Standing Counsel for the appellant-insurer and Sri A. Suryanarayana, learned counsel

for respondent Nos.1 to 3/petitioners. Perused the order under challenge and also the evidence on record.

The points that arise for consideration in this appeal are—

- (1) Whether the transfer of the crime Lorry bearing No.APQ 5877 from respondent No.4 to one A. Madhava amounts to violation of the terms and conditions of Ex.B.2 – Insurance Policy?
- (2) Whether Ex.B.2 – Insurance Policy was in force by the date of accident?
- (3) Whether the quantum of compensation awarded by the Tribunal is excessive and arbitrary?

The learned Standing Counsel for the appellant-insurer contended that though respondent No.1 claims that he is the owner of the offending Lorry as on the date of accident, Ex.B.2 – Insurance Policy shows that the offending vehicle was insured in the name of one A. Madhava Reddy, therefore, as respondent No.1 is not the real owner of the offending vehicle and as he has not informed to the Insurance Company about the change of ownership of the offending vehicle in the name of one A. Madhava Reddy, the appellant-insurer is not liable to pay compensation, as there is violation of the terms and conditions of the Insurance Policy.

Referring to Section 147 of the Act, which deals with the requirements of policies and limits of liability, learned Standing Counsel for the appellant-insurer contended that to cover any contractual liability in order to comply with the

requirement of this Chapter, a policy of insurance must be a policy which (a) is issued by a person who is an authorized insurer; and (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2).

While refuting the said contention, learned counsel for respondent Nos.1 to 3/petitioners submits that the Tribunal has already met this point in para-12 of its order observing as follows:

“.... The policy runs with the vehicle. Indeed the owner of the vehicle and the new owner of the vehicle are expected to inform the insurer whenever there is change of ownership. However, merely because the owner of the vehicle did not inform the insurer, the insurer is not excluded from the liability, more specifically when the liability relates to the third parties. The deceased and the petitioners are third parties to the offending vehicle. Consequently, the claim is maintainable by the petitioners against the second respondent. It is irrelevant whether the policy is in the name of the first respondent or otherwise.”

However, learned Standing Counsel for the appellant-insurer submits that since the original owner of the offending vehicle i.e., Sri A. Madhava Reddy, in whose name Ex.B.2 policy was issued, was not made a party to the claim petition, the appellant-insurer is not liable to pay compensation, as there is no contractual liability between the appellant-insurer and respondent No.1-insured. Therefore, on this ground, learned Standing Counsel for the appellant-insurer sought to remand the matter to the Tribunal for fresh disposal after

adding the owner of the offending Lorry, in whose name Ex.B.2 – Insurance Policy exists.

Though the learned Standing Counsel for the appellant-insurer contended that Ex.B.2 – Insurance Policy was not in force by the date of accident, a perusal of Ex.B.2 shows that the Policy was in force from 22.11.2002 to 21.11.2003, therefore, as the accident occurred on 18.05.2003, the policy was well in force by the date of accident.

The third and last contention advanced by the learned Standing Counsel for the appellant-insurer is that the quantum of compensation awarded by the Tribunal is on higher side, as the Tribunal has taken the income of the deceased as Rs.3,000/- per month without there being any proof.

In this regard, it is to be seen that in the impugned order dated 15.11.2006, the Tribunal has clearly observed that the notional income of the deceased was taken at Rs.3,000/- per month. In view of the catena of decisions of the Hon'ble Apex Court, the notional income of a person, who is working in an unorganized sector can be taken as Rs.3,000/- per month. In the instant case, as the deceased was said to have been working as a Contractor, though there is no proof as to the income of the deceased, the notional income at Rs.3,000/- per month can be taken into

consideration. Therefore, this finding of the Tribunal does not require any interference.

As regards the argument advanced by the learned Standing Counsel for the appellant-insurer with regard to the ownership of the offending Lorry, it is a fact that Sri J. Jaya Ramulu, who is respondent No.1 in the claim petition is said to be the owner of the offending Lorry bearing No.APQ 5877, whereas Ex.B.2 - Insurance Policy stands in the name of one A. Madhava Reddy. It is not the case of the claim petitioners that the ownership of the offending Lorry was transferred from Sri J. Jaya Ramulu to Sri A. Madhava Reddy. The petitioners, being the legal heirs of the deceased, cannot suffer because of non-intimation about the transfer of the offending vehicle in the name of Sri A. Madhava Reddy or any other person. Admittedly, Ex.B.2 - Insurance Policy of the offending Lorry stands in the name of Sri A. Madhava Reddy, therefore, he is a proper and necessary party to the claim petition. Therefore, to explain the discrepancy with regard to the ownership of the offending Lorry by the date of accident i.e., whether Sri J. Jaya Ramulu or Sri A. Madhava Reddy, the matter has to be remanded to the Tribunal to adduce proper evidence. The Tribunal is directed to give an opportunity to both the parties to adduce evidence in this regard.

Therefore, the matter is remanded to the Tribunal for consideration of the fact only to the extent of ownership of the offending Lorry bearing No.APQ 5877 as on the date of accident. In all other respects and aspects, the impugned order dated 15.11.2006 shall remain unaltered. The Tribunal is directed to dispose of the claim petition within a period of three months from the date of receipt of a copy of this order.

With the above observations and direction, this Civil Miscellaneous Appeal is disposed of. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.



GUDISEVA SHYAM PRASAD, J

11.07.2018.

NOTE: Issue C.C. in one week.
(B/O)
Msr

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