HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A No.2251 OF 2009

JUDGMENT:

1. The appellant-United India Insurance Company Limited preferred this appeal aggrieved by the Award and decree dated 28.01.2008 in OP No.1687 of 2006 on the file of learned X Additional Chief Judge (FTC), City Civil Courts, Hyderabad whereby the Tribunal awarded compensation of Rs.3,00,000/- with interest at 7.5% per annum from the date of petition till the date of realization, directing the appellant and third respondent to deposit the same within two months. It was observed that as the third respondent violated the terms and conditions of the insurance policy, the appellant-Insurance Company shall deposit the entire amount of compensation and thereafter recover the same from third respondent.

2. The contention of the appellant is that the Tribunal failed to notice that the alleged crime vehicle was being used for the purpose of supplying water to the industries which amounts to commercial purpose, whereas the policy issued by the appellant was for coverage of agriculture purpose only and that the Tribunal without properly appreciating the oral and documentary evidence on record awarded compensation. It is further contended that the Tribunal ought to have declared that the owner of the crime vehicle only is responsible for the accident because no safety precautions were adopted by the driver of the alleged crime vehicle, as such, there is no liability on the appellant. The Tribunal

wrongly assessed the monthly income of the deceased at Rs.3000/- in the absence of any income proof filed by the first respondent/claimant. Since the respondents 1 and 2/claimants are the earning members, they are not dependants on the deceased. The Tribunal did not consider the negligence on the part of the deceased while awarding compensation.

3. The claim of respondents 1 and 2/claimants in brief is that: on 25.04.2006 at about 9.30 AM the deceased had gone to fetch water with water pot from the offending water tank kept in tractor and trailer bearing Nos. AP 24 U 6363 and 6364 and at that time the driver of the said tractor and trailer having driven the same rashly and negligently dashed the deceased while taking the vehicle reverse. In the said accident, the deceased sustained fatal injuries and succumbed to injuries while shifting to the hospital.

4. The deceased was aged about 50 years and she was hale and healthy. As the labourer in Anand Agrose Company, Bibinagar, Nalgonda District, she used to get salary of Rs.3000/- per month. Due to sudden death of the deceased, respondents 1 and 2 completely bed ridden and under mental shock and agony. Third respondent being the owner and the appellant being the insurer of the said tractor and trailer, both are jointly and severally liable to pay the compensation.

5. Before the Tribunal, the third respondent filed counter contending that the driver of the tractor and trailer was having valid driving licence at the time of accident and in view of the

policy No.050481/47/05/002200 being valid from 2.2.2006 to 25.1.2007 and was in force as on the date of accident, the appellant-Insurance Company has to indemnify his liability under the contract of insurance policy.

6. The appellant-Insurance Company also filed counter contending that respondents 1 and 2 have to prove that they are the dependants on the deceased. It was stated that unless it is proved that the tractor and trailer bearing Nos. AP 24 U 6363 and 6364 was having insurance coverage as on the date of accident, it is not liable to pay compensation. The appellant also filed additional counter contending that as per the depositions of P.Ws.1 and 2, the tractor and trailer bearing Nos. AP 24 U 6363 and 6364 was engaged by the Anand Agrose Company for supplying water daily to its factory which means that the said tractor and trailer was used for commercial purpose whereas the said vehicle was covered by farmer package policy, by which the said vehicle was supposed to use for agricultural purpose only. Since the insured used the tractor and trailer for commercial purpose, it (Insurance Company) is not liable to pay compensation.

7. Based on the rival contentions, the Tribunal framed the following issues for trial.

1. Whether the accident took place on 25.04.2006 at 9.30 AM due to rash and negligent driving of Tractor bearing No. AP 24 U 6362 & trailer bearing No. AP 24 U 6364 by its driver?

2. Whether the petitioners are entitled to claim compensation? If so, to what amount and from whom ?

3. Whether the R.1 violated the insurance policy?

4. To what relief.

8. To prove the respective claims, P.Ws.1 and 2 were examined on behalf of respondents 1 and 2/claimants and Exs.A.1 to A.4 were got marked. On behalf of the appellant and Respondent No.3, R.W.1 was examined and Ex.B.1 was got marked.

9. Now the point that arose for determination in this appeal is, *whether the owner/insured used the alleged vehicle for commercial purpose and did not take any safety measures to avoid the accident, and whether the appellant-Insurance Company is absolved from its liability.*

10. The contention of the appellant-Insurance Company is that the owner/insured is responsible for the accident because no safety precautions were taken by the driver of the tractor and trailer Nos. AP 24 U 6363 and 6364 at the time of accident and that the tractor and trailer was used for commercial purpose, as such, it is not liable to pay compensation.

11. On the other hand, respondents 1 and 2 contended that the tractor and trailer bearing Nos. AP 24 U 6363 and 6364 was used for carrying water which is for agricultural purpose and the said vehicle was not used for commercial purpose. The third respondent/owner did not take safety precautions to avoid the

accident and that the findings of the Tribunal are legal, valid and do not suffer from any legal infirmities.

12. P.W.1 who is the second claimant in the claim petition reiterated the contents in the claim petition,. During the cross examination he admitted the statements made in Ex.A.1-FIR that he received a phone call from Mr. Satyanarayana about the accident and came from Shamshabad Mandal, Ranga Reddy District. Therefore P.W.1 is not a direct eye witness to the accident and he only after receiving phone call reached the spot from Shamshabad, Ranga Reddy District. Apart from the evidence of P.W.1, there is evidence of one K.Parvathi, who is an eye witness to the accident and examined as P.W.2. She was cited as 5th witness in the Ex.A.2-Charge sheet as eye witness to the accident. Her evidence is that on 25.4.2006 at about 9.30 AM , the deceased Mangamma along with her was fetching the water from the water tanker-Tractor and Trailer bearing Nos. AP 24 U 6362 & AP 24 U 6364 and the driver of the said tractor and trailer suddenly took reverse with high speed, rashly and negligently and due to sudden impact, the deceased sustained fatal injuries and while shifting to the hospital, she succumbed to injuries on the way to hospital.

13. Ex.A.1-FIR is presented by P.W.1-Nookaraju wherein he clearly asserted that on 25.4.2006 at about 9.30 AM while his mother was fetching water from the tanker kept in tractor and trailer bearing Nos. AP 24 U 6362 & AP 24 U 6364, the driver of the said tractor and trailer took sudden reverse and due to sudden

impact, she sustained fatal injuries. The Investigating Officer after thorough investigation filed charge sheet Ex.A.2 finding that the accused-Devarakonda Ramesh, who was the driver of the alleged tractor and trailer was responsible for accident. It was stated that the deceased used to fetch water from the water tanker of tractor and trailer and as usual on 25.4.2006 at about 0900 hours, the accused has come to Anand Agrose Company along with his tractor and trailer and supplied water to the company. Meantime the deceased has went to the said water tanker with a metal pot for water and while she was taking the water into her metal pot, the driver of the said tractor did not observed the deceased and negligently took the said tractor in reverse direction in order to go out from the said company and hit the deceased. As a result, she fell down on the ground and sustained fracture injury to her left hand and also sustained injuries to her left side chest region. While she was shifting to the hospital for treatment, on the way, she was succumbed to injuries.

14. Admittedly there is no rebuttal evidence to the evidence of P.W.2 with regard to rash and negligent driving of the driver of the said tractor and trailer. The driver of the alleged tractor and trailer is the proper person to speak about the manner in which the accident occurred , however, he was not examined. Besides the evidence of P.W.2, there is documentary evidence at Exs. A.1 to A.3 which shows that the accident occurred while the deceased and other was fetching the water from the tanker attached to the alleged tractor and trailer. When the driver of the

said vehicle took sudden reverse, there was sudden impact, due to which the deceased sustained fatal injuries and while shifting to the hospital, she was succumbed to injuries. In view of the consistent evidence under Exs.A.1 to A.3 and oral evidence of P.Ws.1 and 2, I am of the considered view the accident occurred due to rash and negligent driving of the driver of the tractor and trailer bearing Nos. AP 24 U 6362 & AP 24 U 6364. Accordingly the finding of the Tribunal in regard thereto is legal, valid and sustainable, warranting no interference.

15. With regard to the compensation, the contention of the appellant-Insurance Company is that at the time of accident, the offending tractor and trailer was used for commercial purpose therefore, the insured/third respondent violated the terms and conditions of the policy. It is pertinent to note that at the time of accident, the alleged tractor and trailer was carrying water and the accident occurred when the deceased was withdrawing the water from the said tanker, the driver of the said tractor took sudden reverse with high speed, in rash and negligent manner. The evidence of RW.1 is that the alleged tractor and trailer was insured under Farmers Package Policy and hence the vehicle is supposed to use for agriculture purpose only, but not for commercial purpose. At the time of accident, the accused vehicle was used to supply water to a company which was revealed from the depositions of P.Ws.1 and 2 that the tractor and trailer bearing Nos. AP 24 U 6362 & AP 24 U 6364, was engaged by the Anand Agrose Company for supplying water daily to the factory. During

the cross examination, R.W.1 admitted that the deceased was the third party to the insurance policy and also admits that the alleged tractor and trailer was registered and it was a commercial vehicle with taxi plate and they have collected premiums on the said vehicle towards agriculture purpose and collected for third party. However he did not know how much they have collected for the commercial vehicle. On re-examination, he stated that if the vehicle is used for commercial purpose, they are not liable to pay compensation even to the third party. Except the oral evidence of RW.1 there is no documentary evidence to show that at the time of accident, the alleged tractor and trailer was used for commercial purpose.

16. In fact the tractor and trailer bearing Nos. AP 24 U 6362 & AP 24 U 6364, are insured under Farmers Package Policy. The said policy is meant for agricultural purpose. In the first page of the policy, the type of policy was mentioned as 'Farmers Package Policy'. In the third page of policy, it was clearly mentioned that they have collected Agriculture Tractor premium and hence the same is supposed to be used for agriculture purpose only. But as per the depositions of P.Ws.1 and 2 the said vehicle was used to supply water daily to the Anand Agrose Company which was situated opposite to the accident place, i.e. at the time of accident, the tractor and trailer was used for commercial purpose. Hence, the appellant-Insurance Company is not liable to pay compensation. It is a fact that the insurer and insured are bound by the policy conditions and insurer is not

liable to the insured if there is violation of any breach of conditions. If the vehicle is used otherwise than the usage mentioned in the policy, the insurance company is not liable to pay any compensation. The Tribunal relied on the decision in NATIONAL INSURANCE COMPANY LTD Vs OM PRAKASH AND OTHERS (2006 ACJ 1334) and held accordingly that the appellant-Insurance Company can be exempted from the payment of compensation.

17. Admittedly, as per the evidence of RW.1, the deceased is a third party to the insurance policy. In the case cited above, the tractor and trailer turned turtle due to rash and negligent driving of the same by its driver, which was insured for the agricultural purpose, but it was being used for carrying the passengers against the terms and condition of the policy. No extra premium was paid for covering the risk of the passengers. It was held therein that the Insurance Company is not liable to pay the compensation. In the said case, the injured while travelling in the tractor and trailer as a passenger sustained grievous injuries. But in the present case, the tractor was carrying water and when the deceased came to fetch water, all of a sudden the driver of the said tractor and trailer drove the tractor with rash and negligent manner by taking reverse, due to which, the deceased sustained injuries. Whereas in the case referred to above, the tractor was carrying the persons including the injured and there by it violated the terms and conditions of the policy as the tractor was insured for agricultural purpose, but it was being used for carrying

passengers against the terms of the policy. But in the case on hand, it was not like so. The accident occurred when the deceased was taking water from the tanker. In NEW INDIA ASSURANCE COMPNAY LIMITED Vs. SIMALA DEVI AND ORS (2004 ACJ 77) it was held that even if it be assumed that there was breach of conditions subject to which the insurance policy had been issued, the deceased being a third party, the Insurer was bound to discharge the statutory liability cast upon it under the provisions of the Motor Vehicles Act, 1988 and pay the amount of compensation determined to be just compensation by the Tribunal and thereafter it could, in case there was really a breach of the terms and conditions indicated hereinabove, recover the amount from the insured either in full or to the extent paid in excess, as the case may be. The Tribunal followed the same principle to the case on hand and came to the conclusion that even if the deceased being a third party to the insurance policy, the insurer was bound to discharge the statutory liability cast upon it and pay the compensation determined by the Tribunal and thereafter it can recover from the third respondent. Accordingly, the tribunal ordered pay and recover. The said finding is legal, valid and do not suffer from any legal infirmities.

18. With the regard to the income and age of the deceased, the evidence of P.Ws.1 and 2 is that at the time of accident, the deceased was working as labourer in Anand Agrose Company along with P.W.2 and was earning Rs.3000/- per month and used to contribute the same to family. In Exs.A.1 and A.2, it

was clearly mentioned that the deceased was working as a labourer in Anand Agrosee Company, for which there is no rebuttal evidence produced by the appellant-Insurance Company and third respondent herein. In the absence of any such rebuttal evidence, the Tribunal based on the evidence of P.Ws.1 and 2 and supported documentary evidence at Exs.A.1 to A.3, held that the deceased was working as labourer in the Anand Agrosee Company and was earning Rs.3000/- per month. Admittedly respondents 1 and 2 were working as labourers, even then they are the legal heirs of the deceased. The Tribunal having taken the income of the deceased at Rs.3000/- per month and having deducted 1/3rd towards her personal expenses had she been alive and having applied the multiplier '13', assessed the loss of dependency at Rs.3,12,000. Added to the same, the Tribunal awarded Rs.5,000/- towards loss of consortium, Rs.2,500/- towards loss of estate and Rs.2000/- towards funeral expenses. In all, the Tribunal awarded total compensation of Rs.3,21,500/-. However, as the respondents 1 and 2/claimants claimed Rs.3,00,000/-, the claim was restricted to Rs.3,00,000/-.

19. Having regard to the foregoing discussion, I am of the considered view that the findings of the Tribunal are legal, valid and do not suffer from any legal infirmities warranting interference by this Court. By virtue of Ex.B.1 policy and since the claimants are labourers, the Tribunal was directed to pay the entire compensation and recover the same from third respondent. .

20. In the result, the appeal is dismissed, with costs, confirming the award and decree dated 28.01.2008 in OP No.1687 of 2006 on the file of learned X Additional Chief Judge (FTC) City Civil Court, Hyderabad .

21. The appellant-Insurance Company is directed to deposit the entire compensation within thirty days from the date of receipt of a copy of this judgment, deducting the amount if any already paid or deposited.

22. On such deposit, the respondents 1 and 2/claimantrs are permitted to withdraw the same according to their share amounts as directed by the Tribunal.

23. Miscellaneous petitions pending consideration if any in the appeal shall stand closed.

JUSTICE N. BALAYOGI

Dated 22nd January, 2018.
Msnr