THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2118 OF 2006

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant-National Insurance Company Limited, aggrieved by the grant of compensation of Rs.1,00,000/- to the 1st respondent/claimant by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, East Godavari at Kakinada ('the Tribunal', for brevity) vide order, dated 13.06.2006, passed in M.V.O.P.No.429 of 2002.

2. Heard the submissions of the learned Standing Counsel representing the appellant and perused the record. Though substituted service is ordered by way of publication in news paper in respect of respondents 1 to 3, there is no representation on their behalf. Since this is an appeal of the year 2006, it can be disposed on merits without there being advancement of arguments on their behalf.

3. The learned Standing Counsel for the Insurance Company would submit that the impugned award passed by the Tribunal is contrary to law and facts of the case; that there was no insurance coverage for the offending vehicle; that there is no evidence to substantiate coverage of the insurance to the said vehicle; that in the absence of valid insurance, the Tribunal ought not to have tagged liability on the appellant-insurer; that grant of compensation of Rs.1,00,000/- is excessive, and ultimately prayed to allow the appeal as prayed for.

4. The Tribunal, after considering the oral and documentary evidence viz. the evidence of the claimant as well as his documents, held that the 1st respondent/claimant suffered injuries in a motor accident that occurred on 05.06.1995 due to rash and negligent driving of driver of Car bearing No.WB16T 8905. The said finding is based on the evidence on record and there is nothing to take a different view.

5. As per Ex.A2-wound certificate and Ex.X1-case sheet, the 1st respondent/claimant suffered the following injuries in the accident.

(a) bone deep crush injury middle of left leg, bleeding present, exposing the underlying structure; &

(b) scale deep bleeding laceration 6 cm x 1/3 cm left side of occipital region.

Injury No.1 is grievous in nature. Ex.A3-disability certificate issued by Medical Board discloses that left leg of the claimant up to knee joint was amputated and the disability is 60%. The Tribunal, by considering the age and income of the claimant and the nature of injuries suffered by him, rightly arrived at the conclusion that the claimant is entitled to compensation of Rs.1,83,300/- viz. Rs.25,000/- towards pain and suffering; Rs.5,000/- towards extra-nourishment; Rs.5,000/- towards incidental expenses; Rs.4,500/- towards loss of earnings; Rs.1,18,800/- towards loss of future earnings and Rs.25,000/- towards loss of future amenities, but, as the claimant made claim of Rs.1,00,000/- only, it awarded the said amount only, and there are no grounds to interfere with the same. It also rightly granted interest @ 7.5% per annum from the date of petition till the date of deposit. Now, the point that has to be determined is whether the Tribunal is justified in directing the appellant-insurance company to pay the compensation awarded, jointly and severally along with owner of the offending vehicle.

6. In support of its contention, the insurance company examined its Assistant Manager as R.W.1 and exhibited Exs.B1 and B2-copies of letters addressed by the insurance company to its branch office at Kakinada dated 23.12.2005 and 08.03.2006 respectively; Ex.B3-attested copy of specimen cover note; Ex.B4-attested copy of letter addressed by the insurance company to respondent No.3 herein; and Ex.B5-attested copy of cover note issued by the insurance company in favour of respondent no.3 herein. Inspite of best efforts, either R.W.1 or other officials of the insurance company could not trace out the policy relating to Ex.B5. There was lot of correspondence in that regard. The correspondence is marked as Exs.B1 to B4. Inspite of the same, no details of the registration of Ex.B5 was traced in the office records of the appellant-insurance company. There is also specific admission of R.W.1, which is coupled with the averments of Ex.B4, that during the relevant period, the appellant-insurance company authorized respondent No.3 herein-M/s. Hindusthan Motors Limited, who is manufacturer of Ambassador cars, to issue cover notes to new vehicles for transit between the manufacturing point to the dealers point in India. Therefore, there is nothing wrong on the part of respondent No.3 herein to issue cover note with regard to the offending vehicle to cover the risk during the transit period. The subject accident occurred and the claimant suffered injuries during the transit period. The same is also not in dispute. Only because the original correspondence record was not found in the office of the appellant-insurance company, the insurance company cannot be absolved from its liability in the instant case. In the circumstances, it cannot be held that there is no valid insurance policy as on the date of the accident, as contended by the appellant. The Tribunal, while dealing with this issue, has elaborately dealt with the oral and documentary evidence, and held that there was valid insurance with the appellant-insurance company during the transit period. The findings of the Tribunal are based on the evidence on record and there is nothing to take a different view. Therefore, it cannot be held that the Tribunal erroneously tagged liability on the insurance company along with other respondents in the M.V.O.P. The contentions raised on behalf of the appellant do not merit consideration. There is no need to interfere and vary the award passed by the Tribunal. The appeal is devoid of merit and is liable to be dismissed.

7. In the result, the appeal is dismissed confirming the Order dated 13.06.2006 in M.V. O.P. No.429 of 2002 on the file of the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, East Godavari at Kakinada.

Miscellaneous Petitions pending, if any, in the appeal shall stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

08.06.2018
DRK

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2118 OF 2006

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