HON'BLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A.No. 109 of 2008

JUDGMENT:

Being aggrieved by the order dated 22.8.2007 passed in MVOP No. 424 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-District Court, East Godavari, Kakinada, the present appeal is filed by the New India Assurance Company Limited which has been arrayed as 3rd respondent in the aforementioned OP.

The facts, in brief, are stated as follows,

That the legal heirs of the deceased Puppala Pedakapu laid a claim against the owner and insurer of the lorry bearing No. AP 05 X 9113 regarding his death before the Motor Accidents Claims Tribunal at Kakinada. Their contention was that on 4.5.2005 at about 3.00 P.M. while the deceased was returning to his house in a lorry bearing No. AP 05 X 9113 after selling Palmyra fruits, the said lorry was driven by its driver in a rash and negligent manner by overtaking a Maruthi car proceeding ahead it and as the result of it, the driver lost control over the lorry and the deceased fell down from the lorry and sustained major injury to his head apart from injuries all over the body. He was taken to Government General Hospital, Kakinada soon after the accident and that he died on the next day of the accident due to head injury which he received in the aforementioned accident. It was also the contention of the claimants that the deceased was getting income of Rs.150/- per day as an agricultural cooli and was contributing his entire income for their maintenance. The claimants, having lost love and affection and the income of the deceased, laid the claim against the appellant and owner of the offending lorry for a sum of Rs.3.00 lakhs.

The Tribunal, on appreciation of the evidence on record, awarded compensation of Rs.1,80,000/- making the appellant liable to pay the same jointly and severally along with the owner of the offending lorry. The insurance company, having felt that the liability was fastened erroneously as against it, came before this Court by preferring the present appeal.

The contention of the appellant was that the deceased travelled unauthorisedly in a goods vehicle and no liability as such could have been fastened as against this appellant. This was only the contention raised by the appellant while repudiating its liability.

I have gone through the award impugned in the present appeal.

It appears that no oral evidence is adduced by the insurance company disproving the evidence adduced by the claimants. The claimants' contention is that while the deceased was returning home in a lorry bearing No. AP 05 X 9113 after selling Palmyra fruits, the lorry was driven with high speed and as a result of which, the lorry turtled and the deceased sustained head injury and fell unconscious. The injuries received by the deceased resulted in his death on the next day of his shifting to the Government General Hospital, Kakinada for the purpose of treatment. It was contended by the appellant-insurance company that the deceased travelled unauthorisedly in the lorry bearing No. AP 05 X 9113 belonging to the 4th respondent herein and that they did not give any intimation about the occurrence of the accident to them. It was also its contention that there was negligence on the part of the deceased himself who travelled in the lorry unauthorisedly.

Admittedly no evidence was adduced by the insurance company establishing its contention that the deceased travelled in the lorry of 4th respondent unauthorisedly. The appellant-insurance company, to substantiate its contention that the deceased travelled in the lorry of 4th respondent unauthorisedly, had not adduced any evidence except the production of insurance policy copy as Ex.B1. It was asserted by the claimants in their pleadings that while the deceased was returning home in the offending lorry after selling Palmyra fruits, the accident in question took place. Since no evidence whatsoever was adduced by the insurance company establishing its contention that the deceased travelled unauthorisedly in the offending lorry, the Tribunal had rightly made it liable to pay the compensation to the claimants along with R4.

Though breach of policy conditions was alleged by the insurance company claiming total exemption from the liability, no evidence was adduced by it except marking of policy copy of the offending lorry as Ex.B1. In the absence of any evidence coming from the side of the appellant establishing its plea that the deceased travelled unauthorisedly, the Tribunal cannot be faulted for not exonerating it from the liability of payment of compensation to the claimants.

The learned Standing Counsel for the appellant-insurance company relied upon a decision of this Court reported in ***National Insurance Company Limited represented by its Divisional Manager, Hyderabad Vs. K. Dwali and others*** [1] to contend that the terms and conditions of policy were breached by handing over the offending lorry in question to a person who did not possess valid driving licence. In the instant case no evidence as such is produced by the insurance company to prove that the offending lorry was handed over to a person who did not possess valid and subsisting driving licence as on the date of accident. Therefore, it is of no helpful to the appellant.

The decision rendered in ***New India Assurance Company Limited Vs. Vedwati and others*** [2] by the Delhi High Court cannot be applied to the present case, as no evidence is let in by the insurance company to prove its contention that the deceased travelled as an unauthorized passenger in the crime lorry.

For the reasons mentioned above, the appeal filed by the insurance company fails and the same is hereby dismissed. Miscellaneous applications, if any, shall stand closed. No costs.

J. UMA DEVI, J

Dt.26.7.2018
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[1] 2014 (6) ALT 62
[2] 2007 ACJ 1043