THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

M.A.C.M.A.NO.726 OF 2012

JUDGMENT:-

Heard Sri Ravi Shankar Jandhyala, learned counsel for the appellant and Sri Y.Veerranna Babu, learned counsel for the respondents.

2. This appeal is filed questioning the order dated 19-10-2011 in M.V.O.P.No.40 of 2009 passed by the Motor Accidents Claims Tribunal, Kakinada (XI Additional District Judge(FTC),Kakinada).

3. The application is filed in the lower court claiming compensation of Rs.3,50,000/- against the respondents jointly and severally. Respondents entered appearance and contested the matter. On behalf of the petitioners, Pws.1 and 2 were examined and Exs.A-1 to A-5 were marked. On behalf of the respondents, Rws.1 and 2 were examined and Ex.B-1 and B-2 were marked. In addition, Ex.X-1 was marked through the witness who was summoned.

4. The lower court, after considering the oral and documentary evidence, granted compensation of Rs.3,17,000/- to the petitioners along with interest and costs(advocate fee). Questioning the same, the present Appeal is filed.

5. The essential question that is raised by the learned counsel for the appellant is that the driver of the Auto in question (deceased) was having a licence to drive a light motor vehicle only and that the deceased was not holding any driving licence to drive the transport vehicle at the time of accident. Therefore, the learned counsel submits that there is a violation of the terms and conditions of the policy. Consequently, he prays that the appeal may be allowed as the Insurance Company is not at all liable to pay the compensation. In addition, the other issue is raised about the income of the deceased, which was fixed at Rs.3,000/- per month. The learned counsel for the appellant submits that there is no adequate evidence for the same.

6. In reply thereto, the learned counsel for the respondents relies upon the judgment of the Supreme Court in *Jagdish Kumar Sood vs. United India Insurance Company Limited ([1])* which followed *Mukund Dewangan vs. Oriental Insurance Company Limited*([2]) and argues that the issue is no longer open for discussion. The learned counsel points out that the Hon'ble Supreme Court held a mere fact that the driver has a licence for a light motor vehicle, does not allow the Insurance Company to avoid its liability. The Apex Court clearly answered the

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[1] Civil Appeal No.24 of 2017
[2] (2017) 14 SCC 663

reference, according to the learned counsel for the respondents.

7. In addition, this court also sees that the assessment of income is also not totally incorrect. The claim is made for Rs.10,000/- and the court below came to a conclusion that the monthly income would be Rs.3,000/- per month. Nothing contrary was pointed out, although it is argued that the assessment is wrong.

8. In view of the clear and categorical pronouncement of the Hon'ble Supreme Court of India on the subject and in view of the fact that there is no material to the contrary to disregard the assessment of the income, this court is of the opinion that no grounds are made out for upsetting or varying the orders passed by the court below. This court finds no merits in the appeal and the same is dismissed.

Accordingly, the Appeal is dismissed. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

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D.V.S.S.SOMAYAJULU,J

25-10-2018
TSNR