HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No.409 of 2012

JUDGEMENT:

This appeal is directed against the order dated 12.01.2007 in MV OP No.149 of 2003 on the file of the Chairman, MACT cum Additional District Judge, Hindupur, wherein the claim of the claimants for compensation was allowed in part, awarding a sum of Rs.2,77,200/- with interest at 6% per annum from the date of petition, directing the 2nd respondent to deposit the same.

2. The appellant herein is the 2nd respondent-insurer, the respondents 1 and 2 are the petitioners and the 3rd respondent is the owner of the Eicher van, in the original petition. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The petitioners filed claim application seeking compensation of Rs.3,00,000/- on account of death of deceased Ramanjanamma in a road accident that occurred on 02.02.2003. The 1st petitioner is the husband and 2nd petitioner is the daughter of the deceased. The case of the petitioners, in brief, is that on the date of accident at about 2.30 p.m. while the deceased was going towards S.Sadlapalli from Teachers colony on the left side of the road, Eicher van bearing No.AP 02 V 3866 belonging to the 1st respondent, insured with the 2nd respondent, came in a rash and negligent manner and dashed against the deceased Ramanjamma, as a result of which, she sustained injuries on her head and others part of the body; immediately she was shifted to Government Hospital, Hindupur, where she succumbed to the injuries; the deceased was working as maid servant and earning Rs.3000/- per month and spending the same for the

maintenance of the petitioners and on account of the sudden death, the petitioners lost dependency and earnings of the deceased.

4. The 1st respondent remained *ex-parte*. The 2nd respondent-insurer filed written statement denying the allegations of the petition and contended that the accident occurred while the deceased was crossing the road and that the accident occurred due to the negligence of the deceased only; the age, income, avocation and health condition of the deceased are not correct; the driver of the van was not having valid driving licence at the time of accident and hence, the 2nd respondent is not liable to pay any compensation.

5. On the basis of the above pleadings, the Tribunal framed three issues. In support of the case of the petitioners, PWs.1 and 2 were examined and got marked Exs.A.1 to A.5. On behalf of the 2nd respondent, RW.1 was examined and Exs.B.1 to B.3 were got marked.

6. Heard Sri V. Srinivasa Rao, learned counsel for the appellant and Sri P. Narahari Babu, learned counsel for the respondents 1 and 2. The case against the 3rd respondent was dismissed for default on 07.09.2011. Perused the records.

7. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the 1st respondent Van is not seriously disputed by the appellant. Considering the evidence of PW.2, an eye witness to the accident, coupled with Exs.A.1-FIR and A.4-Accident report, I am of the view that the accident occurred only due to the rash and negligent driving of the driver of the 1st respondent.

8. Coming to the claim, the petitioners claimed a sum of Rs.3,00,000/- as compensation under various heads for the death of the

deceased. The Tribunal after considering the evidence on record and Ex.A.5 income certificate, granted a sum of Rs.2,77,200/- as compensation under various heads. The Tribunal also held that as the driver of the 1st respondent was holding LMV transport vehicle driving licence and as there is no valid driving licence on the date of accident, the 2nd respondent is not liable to pay the compensation. However, held that for the violation of terms and conditions of the policy by the owner of the vehicle the petitioners cannot be penalized and directed the 2nd respondent to deposit the said amount and gave liberty to realize the same from the 1st respondent by filing E.P.

9. The appellant-insurer does not seriously dispute about the findings of the Tribunal that the petitioners are entitled for compensation of Rs.2,77,200/-. The Tribunal, basing on the evidence and the Gazette notification issued by the Government of Andhra Pradesh, has taken the income of the deceased at Rs.60/- per day and after deducting 1/3rd towards personal expenses and applying the relevant multiplier '18', as the deceased was aged 28 years at the time of accident, determined the loss of earnings at Rs.2,59,200/-, apart from granting a sum of Rs.10,000/- towards loss of consortium to the 1st petitioner, Rs.5000/- towards loss of estate and Rs.3000/- towards funeral expenses, in all granted a sum of Rs.2,77,200/- as compensation. In view of the facts and circumstances of the case, I am of the view that the Tribunal has rightly awarded the compensation to the petitioners and needs no interference by this Court.

10. The only contention of the appellant-insurer is that, the driver of the 1st respondent was not holding valid driving licence at the time of the accident and thus, the owner of the van violated the policy conditions by entrusting the vehicle to a person who had no valid driving licence and as such, the 2nd respondent is not liable to pay the compensation.

11. In support of their contention, the appellant-insurer examined its Officer as RW.1 and marked Ex.B.1-extract of R.C., Ex.B.2-copy of insurance policy. According to the evidence of RW.1, as on the date the accident, the driver of the 1st respondent was having only LMV driving licence. A perusal of Ex.B.3 driving licence shows that the driver of the 1st respondent was having LMV driving licence and the same expired on 20.12.2002 and renewed on 04.02.2003. Admittedly, the accident occurred on 02.02.2003. Therefore, by the date of accident, the driver of the 1st respondent was not having valid driving licence and the 1st respondent entrusted his vehicle to a person, who had no valid driving licence and violated the conditions of the policy. The appellant, therefore, contends that as there is violation of the conditions of the policy, the insurance company is not liable to pay any compensation.

12. In '*National Insurance Company Ltd. Vs Swaran Singh*'[1], the Hon'ble Supreme Court held as follows:

> "...The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is, enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person."

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[1] (2004)3 SCC 2973

13. In view of the decision of the Hon'ble Supreme Court in *Swaran Singh*'s case (supra), the Tribunal has rightly directed the insurer to pay the compensation to the petitioners and to recover the same from the insured.

14. For the reasons stated above, the appeal fails, and is, accordingly dismissed. No order as to costs. Miscellaneous petitions pending, if any, in this appeal, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 12.10.2018
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