THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

M.A.C.M.A.No.2821 of 2018

ORDER:

This appeal is filed under Section 173 of the Motor Vehicles Act by the insurance company challenging the judgment and award dated 06.06.2018 passed in M.V.O.P. No.75 of 2014 on the file of the Chairman, Additional Motor Accidents Claims Tribunal-cum-I Additional District and Sessions Judge, Adilabad.

The respondent No.1/petitioner filed a petition under Section 166 (1) (c) of Motor Vehicles Act, 1988 claiming compensation of Rs.5,00,000/- for the untimely death of Walve Latha Bai D/o Murlithar in a road accident that occurred on 13.05.2013 while she was proceeding on Tractor and Trailer bearing No.AP 01V 3783 and AP 01G 2498 driven by the respondent No.2 in a rash and negligent manner, due to which the Tractor and Trailer turned turtle. As a result of which, Latha Bai received fatal injuries on her body and died instantaneously.

The respondent No.1 contended that the accident occurred due to rash and negligent driving of the driver of the Tractor and Trailer and that the Latha Bai aged 32 years and working as labourer, used to earn Rs.5,000/- per month and on account of her untimely death, the respondent No.1 lost her dependency and put to mental agony etc., and requested to pass award.

The petitioner herein is the respondent No.2 before the Tribunal, filed counter denying material allegations interalia contending that the driver was not holding valid and effective driving license and the driver violated the permit conditions, thereby the insurance company is not laible to pay the compensation. It is also contended that the deceased was travelling as an unauthorised passenger, as the Tractor can be used for agricultural purpose, therefore, her travelling is in violation of terms and conditions of the policy, therefore, the insurance company cannot be made liable for payment of any compensation and requested to dismiss the petition.

Basing on the above pleadings, the Tribunal framed the following issues:

1) Whether the accident took place as alleged by the petitioner on 13.05.2013 at about 3.20 p.m. near Baniyan tree in between Yapalguda and Ramai, resulting in the death of Wavle Latha on account of rash and negligent driving by the driver of Tractor and Trailer bearing No.AP 01 V 3783 and AP 01 G 2498 belonging to respondents or whether there was nay contributory negligence on the part of the deceased?
2) Whether there was any insurance coverage for the Tractor & Trailer bearing No.AP 01 V 3783 & AP 01 G 2498, if so, does the policy cover the risk of deceased and if so, was there aby breach of policy condition alleged by the respondent?
3) What were the age, avocation and the earnings of the deceased?
4) Whether the petitioner is entitled to any compensation, if so, to what extent and against whom?
5) To what relief?

During the course of enquiry, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.15 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and marked Ex.B.1 and in the evidence of R.W.2, Exs.X.1 to X.4 were marked.

Basing on the oral, documentary evidence and other material available on record, the Tribunal awarded Rs.5,90,000/- holding that the policy covered risk of 6 coolies engaged by the insured for loading and unloading purpose and the insurance company cannot avoid its liability to pay the compensation.

Aggrieved by the award, the present appeal is preferred on various grounds. The main grounds urged before this Court in the appeal are as follows:

(1) The insured violated the terms of permit issued by R.T.O.

(2) The deceased Latha Bai was travelling as a passenger in the Tractor, which is not a goods vehicle, therefore, her travelling in the vehicle as gratuitous passenger and the policy does not cover the risk, thereby the insurance company is not liable to pay compensation.

(3) In terms of Ex.B.1 policy I.M.T.No.39, insurance company is not liable to pay any compensation. Therefore, sought to exonerate the appellant from payment of any compensation to the respondent No.1.

Learned counsel for the respondent No.1 contended that the policy covered the risk of '6' coolies engaged by the insured collecting additional premium, therefore, insurance company cannot avoid the liability to pay compensation and violation of terms of the policy is not a ground to exonerate the insurance company from its liability to pay compensation when the petitioner agreed to indemnify loss that sustained to insured and requested to dismiss the appeal at the stage of admission itself.

The accident and death of Latha Bai is not in controversy, so also rashness and negligence attributed to the driver of the Tractor and Trailer. Ex.B.1 policy is also not in dispute. The short questions remain for consideration are as follows:

1) Whether the insured violated the terms and conditions of the policy?

2) Whether the deceased Latha Bai was travelling as passenger in the Tractor and Trailer, which is exclusively meant for agricultural operations, if so, whether the insurance company is liable for payment of compensation to the respondent No.1?

In view of undisputed facts narrated above and in view of the contentions of the appellant, I would like to examine whether any permit granted in favour of the insured for the Tractor and Trailer was in force as on the date of accident is also one of the questions to be decided.

As per the evidence of R.W.2 – Junior Assistant, RTA, Adilabad, he produced extract of registration certificate of Tractor and Trailer bearing No.AP 01 V 3783 and AP 01 G 2498 respectively. As per Ex.X.2 extract only one seat is provided for the driver only. In Ex.X.3 also seating capacity was shown as only one. Thus, only one person can operate the Tractor. Ex.X.4 is the permit of the Trailer valid from 23.11.2012 to 22.11.2017, whereas the accident in the present case was occurred on 13.05.2013. Therefore, by the date of the accident, the permit was in force and on the ground of operating the vehicle without permit, the insurance Company cannot be exonerated from its liability in view of the evidence of R.W.2 coupled with Ex.X.4.

The other contention raised in the grounds of appeal is that the Tractor is meant for operation by one person i.e. driver that does not mean that no person can be engaged as coolie for loading and unloading purpose. Ex.B.1 is the certificate of insurance produced before the Court.

Learned counsel for the petitioner did not dispute about collection of premium covering the risk of six coolies in addition to the risk of driver. But as per IMT 46, the appellant cannot be made liable for payment of compensation.

For better appreciation, IMT 46 is extracted hereunder:

> "IMT.46.Legal liability to passengers excluding liability for accidents to employees of the insured arising out of and in course of their employment.
>
> (Applicable to Ambulance/Hearses under class D of Commercial vehicles and to Motor Trade Vehicles)
>
> In consideration of an additional premium of Rs...... and notwithstanding anything to the contrary contained in Section II – I (c) but subject otherwise to the terms exceptions conditions and limitations of this policy the insurer will indemnify the insured against liability at Law for compensation (including legal costs of any claimant) for death of or bodily injury to any person other than a person excluded under Section II – I (B) being carried in or upon or entering or mounting or alighting from the vehicle insured.
>
> Provided always that in the event of an accident occurring whilst the vehicle insured is carrying more than the number of persons mentioned in the schedule hereto as being the licensed carrying capacity of that vehicle in addition to the conductor if any then the insured shall repay to the insurer ratable proportion of the total amount which would be payable by the insurer by reason of this endorsement if not more than the said number of persons were carried in the vehicle insured.
>
> Provided further that in computing the number of persons for the purpose of this endorsement any three children not exceeding 15 years of age will be reckoned as two persons and any child in arms not exceeding 3 years of age will be disregarded.
>
> Provided also that the provisions of condition 3 of the policy are also applicable to a claim or series of claims under this endorsement.

Provided further that in the event of policy being cancelled at the request of the insured no refund of premium paid in respect of this endorsement will be allowed.

Subject otherwise to the terms exceptions conditions and limitations of this policy.

(For use with "Liability only" policy)

In consideration of an additional premium of Rs..... and subject otherwise to the terms exceptions conditions and limitations of this policy the insurer will indemnify the insured against liability at law for compensation (including legal costs of any claimant) for death of or bodily injury to any person other than a person excluded under general exception being carried in or upon or entering or mounting or alighting from the vehicle insured.

Provided always that in the event of an accident occurring whilst the vehicle insured is carrying more than the number of persons mentioned in the Scheduled hereto as being the licensed carrying capacity of that vehicle in addition to the conductor if any then the insured shall repay to the insurer ratable proportion of the total amount which would be payable by the insurer by reason of this endorsement if not more than the said number of persons were carried in the vehicle insured.

Provided further that in computing the number of persons for the purpose of this endorsement any 3 children not exceeding 15 years of age will be reckoned as two persons and any children in arms not exceeding 3 years of age will be disregarded.

Provided further that in the event of policy being cancelled at the request of the insured no refund of premium paid in respect of this endorsement will be allowed."

Taking advantage of this condition, the learned counsel for the petitioner sought to exonerate the insurance company from payment of compensation.

Admittedly, in the present case, additional premium was collected covering the risk of 6 coolies for loading and unloading in the Tractor, which is being used for agricultural purpose. As seen from the record, the vehicle was carrying load of bricks and the deceased was travelling in the said vehicle as coolie for loading and unloading purpose. This fact is also supported by the evidence. Even otherwise, according to IMT 46, when the insured engaged services of coolies, insurance company cannot escape from its liability to pay compensation when collected additional premium covering the risk of 6 coolies.

Learned counsel for the petitioner relied on the judgment of the Apex Court rendered in "***M.S.Middle High School v. HDFC ERGO General Insurance Co.Ltd. and others***[1]" to contend that when the terms of policy are violated, the insurance company cannot be made liable for payment of compensation.

In the facts of the present case, the deceased was travelling as a coolie engaged by the insured for loading and unloading purpose as per the findings recorded by the Tribunal. But the Tribunal did not consider the IMT.46 conditions of policy annexed to certificate of insurance, if this condition is accepted, insurance company cannot be made liable in view of the law declared by the Apex Court in "***M.S.Middle High School v. HDFC ERGO General Insurance Co.Ltd. and others***" (referred supra). But the Tribunal without considering the terms and conditions of policy, more particularly IMT.46 passed an award against the petitioner. Therefore, the finding of the Tribunal is contrary to the law declared by the Apex Court in the judgment referred supra.

The other contention urged before this Court is that though deceased Latha Bai was unmarried woman, the Tribunal deducted 1/3rd of the annual income towards personal expenses though the

[1] 2018 ACJ 2108

deceased was unmarried woman, aged 32 years, but appropriate deduction towards personal expenditure, in view of the judgment of the Apex Court rendered in "***Sarla Verma v, Delhi Transport Corporation and another***[2]" is 50% of the earnings of the deceased and the same shall be deducted towards personal expenses and only 50% can be taken as contribution to the family.

The Tribunal considered the monthly income of the deceased as Rs.4,500/-, which is not in dispute, but deducted 1/3rd of the income towards personal expenses, the same is contrary to the principle laid down in Apex Court in "***Sarla Verma v, Delhi Transport Corporation and another***" (referred supra). Only 50% shall be deducted towards personal expenses and 50% shall be taken as contribution to the family.

The principles laid down in "***Sarla Verma v, Delhi Transport Corporation and another***" (referred supra) were approved by the Apex Court in "***National Insurance Company Limited v. Pranay Sethi and others***[3]", wherein, the Constitutional Bench of the Supreme Court consisting of five Judges while deciding a case under Motor Vehicles Act, 1988, observed in paragraph 19 as follows:

> "Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforestated pronouncements including that of the Constitution Bench and, therefore, <u>we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline</u>."

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[2] (2009) 6 Supreme Court Cases 121
[3] (2017) 16 Supreme Court Cases 680

In view of the principles laid down in the judgments (referred supra), only 50% of income of the deceased shall be taken as contribution to the family.

If Rs.4,500/- per month as income of the deceased is taken into consideration, annual income comes to Rs.54,000/-, after deducting 50% towards personal expenses, contribution to family would come to Rs.27,000/-. The Tribunal applied multiplier '16', which is not in dispute before this Court. Hence, under the head of loss of income i.e. contribution to family, the claimant is entitled to Rs.27,000 X 16 = 4,32,000/-. The claimant is also entitled to Rs.30,000/- for loss of consortium, loss of estate and funeral expenses. Therefore, total amount under various heads comes to Rs.4,62,000/- (Rupees Four Lakhs Sixty two thousand only).

The other contention of the petitioner is that when Exs.X.2 and X.3 permits travelling of one person in the vehicle, he must be driver only. Permitting travel of any other person in operation of vehicle is contrary to the permit and though permit was in force by the date of accident, if the terms and conditions of the permit are violated, insurance company cannot be made liable to pay compensation. Therefore, Tribunal committed grave error in attaching the liability to the insurance company. Though the insurance company is not liable to pay compensation, the insurance company is directed to pay compensation and recover the same by applying the principle of pay and recover subject to the guidelines issued in "***Oriental Insurance Company v. Nanjappan***[4]."

In the result, the appeal is partly allowed reducing the quantum of compensation from Rs.5,90,000/- to Rs.4,62,000/- (Rupees Four Lakhs Sixty two thousand only). The petitioner is entitled to interest at the rate of 7.5% per annum from the date of filing of petition till the date of deposit or realization. The insurance company is directed to pay compensation to the claimant and recover the same from insured and the Executing Court is directed to follow the guidelines issued by the Apex Court in "***Oriental Insurance Company v. Nanjappan***." (referred supra)

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

06.11.2018
Ksp

[4] 2004 (13) SCC 224