THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1983 of 2009

JUDGMENT:

This appeal is preferred by the appellant/insurer questioning the order of the Motor Accident Claims Tribunal-cum-II Additional District Judge, Mahabubnagar (for short, the Tribunal) in O.P.No.241 of 2001 dated 06-03-2006.

2. Brief facts of the case are that on 02-02-2001, the claimant while he was traveling in a lorry along with his goods, and when he reached Kothakota in the limits of Bhoothpur village on a bridge, the vehicle of R-1 dashed the lorry and caused to injuries sustained by the claimant. Hence, he filed the claim petition against the respondents, who are the owner and insurer of the crime vehicle, claiming compensation of Rs.1.00 lakh.

3. In the claim petition, the appellant-insurer filed a counter denying the allegations and contended that the amount claimed by the claimant is highly excessive and that it is not liable to pay any compensation and therefore prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the 1st respondent and accordingly granted compensation of Rs.60,000/- i.e. Rs.35,000/- towards four fractures sustained by the claimant; Rs.20,000/- towards medical expenses and Rs.5,000/- towards loss of earnings. Aggrieved by the said order, the appellant/insurer filed the present appeal.

5. Heard.

6. The only contention raised by the learned counsel for the appellant-insurer is with regard to the liability of the insurance company to pay the compensation. He contends that the risk is not required to be covered under the policy conditions. Further, though the claimant has contended that he is the owner of the goods in the vehicle, he has not made out his case to prove that he is the owner of the goods. Hence, the claimant unauthorized person to travel in the goods train. Therefore, there is no liability on the insurance company to pay and recover the same. So far as the liability with regard to the accident occurred and granting of quantum of compensation is concerned, he does not dispute the same.

7. Learned counsel for the claimant contends that the claimant is the owner of the goods and he is traveling in the vehicle along with the goods, therefore, he cannot be considered as gratuitous passenger and he is entitled to the claim and that the order passed by the Tribunal is correct and the appeal needs to be dismissed. In support of his contention, he has relied on **United India Insurance Company v. Suresh K.K. and another**[1] following the judgment of the Supreme Court in **National Insurance Company v. Baljit Kour**[2]**.**

8. Having perused the record, P.W.1 in his evidence, categorically states that the claimant while was accompanying his goods was traveling in the vehicle involved in the accident and thus, he is not a gratuitous passenger and therefore he is entitled for compensation.

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[1] (2008) 12 S.C.C. 657
[2] (2004) 2 S.C.C. 1

9. In the counter affidavit and also in the evidence of R.W.1, the insurance company has not denied the contention of the claimant on the issue of owner of the goods vehicle. Further, in the light of the judgment of the Apex court in **Suresh K.K. and another** (2 supra), this Court is of the opinion that the claimant is not a gratuitous passenger and he is the owner of the goods vehicle and that the insurance company is liable to pay the compensation. Hence, the award of compensation granted by the Tribunal is just and proper and requires no interference.

10. Accordingly, the Motor Accident Civil Miscellaneous Appeal is dismissed. No order as to costs.

11. Miscellaneous petitions pending, if any, shall stand dismissed.

T.AMARNATH GOUD, J

Date: 06-08-2019
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