THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA. No.3762 of 2005

JUDGMENT:

This appeal is preferred by the appellant/United India Insurance Company Limited, against the order dated 21.09.2005 passed in O.P. No.1162 of 2002 by the Principal Motor Accidents Claims Tribunal at Nalgonda.

The claimants 1 to 3 are the sons of the deceased Miryala Narayana.

Brief facts of the case are that on 20.08.2002 at about 11.00 am., the deceased along with his son and some others were traveling in an auto bearing registration No.AP-24-U-2061 from Bollanpally village to Devarakonda and when they reached near Khanapur Bus stage in Dindi Mandal, the driver of the auto drove it in a rash and negligent manner and at high speed as a result of which, the auto turned turtle and in that accident the deceased Narayana sustained grievous injuries and later he succumbed to the injuries while he was being taken to Osmania General Hospital, Hyderabad for treatment. The accident occurred only due to rash and negligent driving of the auto by its driver. The Dindi Police registered a case in Crime No.59 of 2002 under Section 304-A, 338 and 337 IPC against the driver of the auto. The claim of the claimants is that prior to the accident deceased was doing Kirana business and was earning Rs.4,000/- per month and contributing the same for the maintenance of his family. Hence, the claimants filed the claim petition against the respondents in the claim petition claiming compensation of Rs.1,50,000/- for the death of the deceased.

The Court below on 21.09.2005, while taking into consideration the aspects urged before it from either side and the evidence adduced, oral and documentary, it allowed the claim petition and awarded the compensation of Rs.1,36,500/- with proportionate costs and interest at the rate of 7½% per annum from the date of petition till date of realisation.

Aggrieved by the said order, the appellant, Insurance Company, preferred the present appeal on the grounds that the Court below ought to have seen that the alleged accident took place only due to overload only and therefore, the appellant Insurance Company is not liable to pay any compensation to the claimants; that the Court below erred in holding the finding that in the event of failure to deposit the compensation amount by the 4th respondent herein, the appellant has to satisfy the award by depositing the compensation amount within the time prescribed is wholly illegal and not sustainable in the eye of law; that the Court below ought to have seen that when no liability is attributed against the appellant, the question of satisfying the award by them or recovering the compensation from the 4th respondent herein does not arise.

From a perusal of the impugned order, it is clear that the Court below while holding that the accident took place due to rash and negligent driving of the driver of the offending auto awarded an amount of Rs.1,36,500/- towards compensation with proportionate costs and interest at the rate of 7½% per annum.

It is to be noted here that it is not the case of the appellant, Insurance Company, that the learned Tribunal had awarded excess amount of compensation, but it is their case that the learned Tribunal ought not to have directed them to satisfy the award and then recover the same from the owner of the offending vehicle. The learned Tribunal also observed that there was violation of terms and conditions of the policy and the appellant is not liable to pay compensation.

Insofar as Tribunal fixing the liability on the owner of the offending vehicle to pay the compensation is concerned, on the basis of the evidence, the Tribunal came to the conclusion that the owner of the offending vehicle allowed the driver, who was having licence to drive Light Motor Vehicles (non-transport). The offending vehicle involved in the accident was transport vehicle. Since there was violation of terms and conditions of the policy, the Insurance Company was not liable to pay compensation to the claimants. Accordingly, the Tribunal exonerated the liability of Insurance Company and directed the owner of the offending vehicle to pay the compensation amount. In the similar circumstances, the Hon'ble Supreme Court in **Shivaraj Vs. Rajendra[1],** directed the insurance company to pay the compensation amount at the first instance and recover the same from the owner of the crime vehicle. In view of the same, appellant, Insurance Company, was directed that if the owner of the offending vehicle failed to deposit the compensation amount as directed, the appellant, Insurance Company, shall satisfy the award by depositing the compensation amount and recover the same from the owner of the offending vehicle by initiating execution proceedings, without filing separate suit.

In that view of the matter, I am of the opinion that the learned Tribunal did not commit any error in directing the Insurance Company to pay and recover. Hence, this appeal is liable to be dismissed and accordingly is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 26.11.2019
LSK

[1] 2018 AIR (SC) 4252