

HONOURABLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.1636 OF 2006

JUDGMENT:

Feeling aggrieved by the Judgment and decree dated 23.02.2006 in O.P. No.635 of 2002 passed by the Motor Accident Claims Tribunal (District Judge), Nizamabad, the Insurance Company, appellant herein, preferred the present appeal.

2. Vide the aforesaid judgment, the Tribunal awarded an amount of Rs.2,45,000/- to the petitioners 1 and 2, parents of the deceased. The Tribunal further awarded that the 1st petitioner, father of the deceased, is entitled to an amount of Rs.1,20,000/- and costs of the petition and the 2nd petitioner, mother of the deceased, is entitled to an amount of Rs.1,25,000/- and they are entitled to withdraw their proportionate accrued interest and their respective shares after deposit. Aggrieved by the said judgment, the Insurance Company preferred the present appeal.

3. Heard the learned counsel for the appellant and the learned counsel for the respondents.

4. It is the contention of the appellant that the vehicle in dispute is a private vehicle – Jeep and it was hired by the deceased and others and thus, there is violation of the policy conditions. But, the Tribunal without considering the same and without appreciating the contentions of the Insurance Company, awarded compensation in the manner stated supra and the said finding of the Tribunal is erroneous.

Learned counsel would further contend that there is no dispute with regard to the accident and coverage of insurance by the said vehicle. His only contention is with regard to the violation of conditions of the policy i.e. Ex.B-1. In support of his contention, learned counsel for the appellant would rely upon Ex.B-7, statements recorded by the police under Section 161 Cr.P.C.

5. On the other hand, learned counsel for the claimants would submit that the vehicle in dispute was not hired by the deceased and on analysis of the entire evidence, the Tribunal gave a specific finding that RW-2, owner of the vehicle, deposed that his brother is studying in Bichkunda School and he requested him to go to Basara along with his friends and Principal of the College in the said vehicle and the said vehicle was not hired. By referring the said finding of the Tribunal in the impugned judgment, learned counsel for the claimants prays for dismissal of the appeal.

6. A perusal of the entire evidence on record including Ex.B-1 policy and Ex.P-7 statements recorded by the police under Section 161 Cr.P.C., would show that the accident is not in dispute and coverage of insurance to the vehicle is also not in dispute. In Ex.P-7 statements (4 in number), recorded by the police under Section 161 Cr.P.C., it is mentioned about hiring of the Jeep. Except the said Ex.P-7 statements, there is no other evidence to show that the vehicle was hired. It is settled principle of law that the statements recorded by the police under Section 161 Cr.P.C., have no evidentiary value and therefore, the same cannot be relied upon.

7. On the other hand, the Tribunal on the analysis of the entire evidence including oral and documentary, gave a specific finding that the 2nd respondent i.e. Insurance Company did not adduce any kind of evidence to prove that the Jeep was hired to the Principal of the School and R.W-2 owner of the vehicle stated in his evidence that his brother, who was studying in Bichkunda school, requested to provide jeep to go to Basara along with the Principal of the School. It was further held by the Tribunal that the contents of the charge sheet also do not show that the Jeep bearing No.AP-23/B-1233 was hired to the Principal of the School.

8. As discussed supra, except Ex.P-7 statements, the appellant insurance company did not file any other evidence to show that the vehicle was hired. In the absence of any evidence, it cannot be believed that the vehicle was hired. As stated above, the Tribunal, on the analysis of entire evidence, gave a specific finding that the vehicle was not hired. This Court is satisfied with the said reasoning given by the Tribunal.

9. In view of the above said discussion, there is no circumstance that warrants interference with the impugned judgment. Hence, the appeal fails and accordingly, the same is dismissed.

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

K. LAKSHMAN, J

January 22, 2020

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