HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. NO.1260 OF 2014

Judgment:

This appeal is filed by the appellant/claimants, being aggrieved by the award and decree dated 11-03-2013, made in O.P No.380 of 2011 on the file of the Chairman, Motor Accidents Claims Tribunal-Cum-III Addl. District Judge, (Fast Track Court), Asifabad (for short, the Tribunal).

For the sake of convenience, hereinafter, the parties are referred to as per their array before the Tribunal.

The facts of the case are as follows:

The claimants have filed the claim petition under Section 166(1)(c) of the Motor Vehicles Act claiming compensation of Rs. 6.00 lakhs for the death of the deceased the one called Vinod Kumar, who died in a motor vehicle accident that occurred on 20.09.2010 at about 14.00 hours. It is stated by the petitioner that on the fateful day the deceased was proceeding towards Ankusapur Road, vagu on a tractor bearing No. Ap15V-6816 as a labour. The driver of the tractor drove the vehicle in a rash and negligent manner and advised him to sit on front mudguard, due to which he fell down and died on the spot.

Based on the report Police, Kaghznagar rural registered a case in Cr. No.44 of 2010 against the driver of the tractor bearing No. AP15V-6816 under Section 304-A IPC stating that the accident occurred due to rash and negligent driving and filed charge sheet against him.

It was further contended that the deceased was hale and healthy and was working as tractor labour and used to earn Rs.6,000/- per month. As the accident occurred due to rash and negligent driving by the tractor driver, the claimants, filed claim petition against the respondents 1 & 2, being owner and the insurer of the tractor.

Before the tribunal respondent no. 1 remained ex parte and respondent no. 2 filed counter denying the averments of the claim petition and the manner in which the accident occurred, including the age, avocation and income of the deceased. It is further contended that a false case was registered and that the driver of the tractor is not having valid and subsisting driving license. Furthermore, he also contended that the amount claimed is excessive and exorbitant and prayed for dismissal of the case.

Heard both sides and perused the material available on record.

The main contentions advanced by the learned counsel appearing for appellants is that the tribunal has erred in holding that the respondent no. 1, who is the owner of the tractor is only liable to pay compensation awarded by the tribunal. It is contended that the learned Tribunal ought to have considered the fact that the deceased was working as a labour and was a third party to the policy. Therefore, insurance company cannot evade its liability of paying compensation and the tribunal ought to have directed the insurance company to first pay the compensation to the claimants and then recover the same from the owner of the vehicle by invoking the principle of *pay and recover*.

Per contra, the learned counsel for respondent no. 2, Standing Counsel for insurance company has contended that as there was breach of terms and conditions of the insurance policy by the owner of the offending vehicle, the tribunal has rightly exonerated the insurance company from the liability of payment of compensation and the said findings need no interference by this court.

Admittedly, there is no dispute with regard to the manner of the accident and the rash and negligent driving of the offending vehicle by its driver in causing the accident on 29.10.2009. Even the learned counsel for respondent No. 2 has not seriously disputed the quantum of compensation amount awarded by tribunal. But, the only contention of the learned Counsel for respondent No. 2 is that the deceased was not a labour and he was an unauthorized passenger and was sitting on Mud-guard of the tractor and therefore, as there was breach of terms and condition of the Policy, the respondent No. 1 alone is liable to pay the compensation.

The Apex Court in the case of **National Insurance Company Ltd., v. Baljit Kaur and Others**[1], at para No. 21, has observed as under:-

"21….We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in New India Assurance Co. v. Satpal Singh (2000) 1 SCC 237. The said decision has been overruled only in New India Assurance Co. Ltd. v. Asha Rani (2003) 2 SCC 223. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal…"

Further, as per the decision of the Apex Court in **National Insurance Company Ltd. v. Swaran Singh and others**[2], the insurer is under obligation to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured as per the Doctrine of "*pay and recover*".

For the reasons discussed above and in view of the decisions mentioned *Supra*, the M.A.C.M.A. is allowed in part and while maintaining the quantum of

[1] (2004) 2 SCC 1
[2] (2004) 3 SCC 297

compensation, following the doctrine of '*pay and recover'*, the respondent No. 2 Insurance Company is directed to satisfy the award by paying the compensation amount, as was awarded by the tribunal, to the claimants herein, in the first instance and thereafter recover the same from the owner of the offending vehicle i.e., the respondent No. 1 herein, without initiating any separate proceedings. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.G.PRIYADARSINI,J

Pgp

15-12-2022

HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. NO.1260 OF 2014

DATE: 15-12-2022