THE HON'BLE JUSTICE G. SRI DEVI

M.A.C.M.A. No.762 of 2007

JUDGMENT:

This appeal is preferred by the appellant-Insurance Company, questioning the award and decree, dated 23.06.2006 passed in M.V.O.P.No.984 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Warangal (for short, the Tribunal).

For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

The claimants filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.3,00,000/- for the death of the deceased Macherla Rajaiah, who died in a motor vehicle accident. It is stated that on 22.01.2004 the deceased and others have engaged DCM Van bearing No.AP 22 T 5518 to transport the agricultural goods i.e., Mirchi and Cotton bags to Grain Market, Warangal and they were traveling in the Van along with their goods. It is also stated that when the said DCM Van reached Alugu Vagu bridge, the driver of the Van drove it in a rash and negligent manner with high speed, lost control over the Van and dashed to a tree, as a result of which the deceased and others were thrown out of the Van and fell down on the road and the deceased and others persons including the driver of the Van died on the spot. On a complaint a case in Crime No.13 of 2004 has been registered. It is also stated that in view of the death of the deceased the claimants lost their source of income, love and affection, hence, the claimants filed aforesaid O.P. against respondent Nos.1 and 2, being owner and insurer of the aforesaid DCM Van, respectively, claiming compensation of Rs.3,00,000/- for the death of the deceased.

Before the Tribunal, the 1st respondent remained *ex parte* and the 2nd respondent filed counter denying the averments of the claim petition. It is also contended that the deceased was traveling in the Van as an unauthorized passenger and the 1st respondent, owner of the Van has violated the terms and conditions of the policy, as such, the insurance company is not liable to pay any compensation.

Basing on the above pleadings, the following issues are framed before the Tribunal:-

1) Whether the accident occurred on 22.01.2004 is due to rash and negligent driving of the driver of vehicle bearing No.AP 22 T 5518 (DCM Van) driven by it's driver as per section 166 of M.V.Act?
2) Whether the petitioner is entitled for compensation? If so, to what amount and from whom?
3) To what relief?

During trial, on behalf of the claimants, P.Ws.1 to 4 were examined and Exs.A1 to A9 were marked. On behalf of the respondents, R.W.1 was examined and Ex.B1-copy of policy was marked.

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 driver of the DCM Van and awarded total compensation of Rs.1,20,000/- together with interest @ 7.5% per annum from the date of petition till the date of realisation. Aggrieved by the said order, the appellant-Insurance Company filed the present appeal.

Heard both sides.

The only contention raised by the learned Standing Counsel for the insurance company is that since the deceased was traveling in the goods vehicle as un-authroised passenger, the Tribunal erred in fastening the liability on the Insurance Company.

A perusal of the order reveals that the Tribunal after evaluating the judgments of the Apex Court ought to have been furnished by the Counsel for the respective parties and the evidence available on record came to the conclusion that the Insurance Company is liable to pay the compensation, even to the owner of the goods or his authorized representative. The findings of the Tribunal in para No.14 of the impugned judgment are necessary to be reproduced herein for better appreciation of the matter.

> “In the present case it is the contention of the petitioners that the deceased was traveling along with the Mirchi and Cotton, to sell the same in Grain Market and that the deceased and others engaged the DCM

> Van in question. No doubt it is argued by the Counsel for R.2 that there is no evidence to show that the deceased was traveling along with the goods. But there is oral evidence that the deceased and others were traveling along with their agricultural crops to sell the same in Warangal Grain Market. On the other hand, no contra evidence is placed by the Insurance Company. So, if this is taken into consideration, it is very clear that the deceased and other persons were traveling in the vehicle along with their goods, agricultural products as owners of the goods."

In view of the settled position of law, I do not find any perversity or illegality in the findings arrived at by the Tribunal in fastening the liability on the Insurance Company. Therefore, I see no reason to interfere with the order of the Tribunal and the appeal is liable to be dismissed.

Accordingly, the M.A.C.M.A. is dismissed confirming the order and decree passed by the Tribunal. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

01.02.2022
gkv