HONOURABLE JUSTICE M. G. PRIYADARSINI

M.A.C.M.A. No. 561 of 2018

JUDGMENT:

The Reliance General Insurance Company Limited/ respondent No. 2 before the Tribunal, preferred this appeal challenging the order and decree, dated 13.12.2017, passed in M.V.O.P. No. 278 of 2014 on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge, at Nizamabad.

Respondent Nos. 1 to 5 herein are the claimants before the Tribunal. They filed the O.P. claiming compensation of Rs.5,00,000/- for the death of the deceased-Chavan Laxman Nayak in the motor accident that occurred on 26.02.2014. According to the claimants, on 26.02.2014 at about 11-45 a.m. the deceased was traveling in the tractor and trolley bearing No. AP 25 AG 3693 along with cement rings from Manikbhandar cross roads towards Makloor village. The driver of the said tractor drove it in a rash and negligent manner at high speed and lost control over the tractor and drove it in zig zag manner, due to which the deceased fell down on the road and the tyres of the trolley ran over him. Due to which, the deceased sustained grievous crush injuries all over the body and died on the spot. It is further alleged that the accident occurred only due to the rash and negligent driving of the driver of the tractor. Hence, the claimants, being the family members, laid the claim for Rs.5.00 lakhs towards compensation.

Respondent No.1 remained absent.

Respondent No.2 filed counter disputing the manner of accident, age, income and avocation of the deceased. It is further contended that the seating capacity of the tractor is only one which is meant for driver, but as per the First Information Report, the deceased was traveling on the tractor bearing No. AP 25 AG 3693 by sitting on the mudguard of the tractor besides the driver at the time of accident. Further it is also contended that the driver of the tractor was not holding valid driving license and therefore, prayed to dismiss the petition.

Considering the claim and the counter filed by the Insurance Company, appellant herein, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly allowed the O.P. awarding total compensation of Rs.2,76,000/- with 7.5% interest per annum, holding the owner of the offending vehicle i.e., the respondent No. 6 herein and the insurance company, appellant, jointly and severally liable to pay the compensation.

Heard the learned Standing Counsel for the appellant-Insurance Company and the learned counsel for the claimants-respondent Nos. 1 to 5 herein. Perused the material available on record.

Now, the main contention of the learned Standing Counsel for the appellant is that the learned Tribunal ought to have considered the evidence of P.W.2, who deposed that on 26.2.2014 at about 9-30 a.m. himself and one Chavan Laxman Nayak in a tractor bearing No. AP 25 AG 3693 which belongs to respondent No.1 and while they were returning from Manikbhandar village to their village, the driver of the said tractor drove it in a rash and negligent manner when it reached Borgaon (K) village shivar at about 11-45 a.m. the driver of the tractor lost control over it, due to which the deceased Laxman Nayak fell down from the tractor and the tyres of trolley ran over his head, due to which the deceased died on the spot; that the Tribunal ought to have seen that the deceased was not a third party as he was travelling on a Mud guard of the Tractor and therefore, he is an unauthorized passenger, which is also evident from Ex.A.1, FIR and Ex.A.2, Charge Sheet. Therefore, the learned counsel contends that as there was breach of terms and conditions of the insurance policy by the owner of the offending vehicle i.e., respondent No. 6

herein, the learned Tribunal ought not to have fastened liability on the Insurance Company. Therefore, it is contended that in the circumstances of the case, the learned Tribunal ought to have directed the Insurance Company to pay the compensation in the first instance and granted liberty to recover the same from the owner of the offending vehicle, for breach of terms and conditions of the policy.

On the other hand, learned counsel appearing for respondent Nos. 1 to 5-claimants, contended that the learned Tribunal after considering the evidence on record passed reasonable order which needs no interference by this Court.

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 26.02.2014. Even the learned counsel for the appellant has not seriously disputed the quantum of compensation amount awarded by the learned Tribunal. But, the only contention of the learned Standing Counsel for the appellant is that the deceased was an unauthorized passenger and was sitting on Mud-guard and therefore, as there was breach of terms and condition of the Policy, the learned

Tribunal ought not to have fastened liability upon the insurance company.

Considering the said contention of the learned Standing counsel for the appellant, the Tribunal has held that although the deceased was sitting on the mud-guard, the Insurance Company cannot escape from compensating the claimants, more particularly, when the claimants had established that the accident had occurred only due to the rash and negligent driving of the Tractor by its driver. 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…"

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[1] (2004) 2 SCC 1

In the case of third party risks, 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. Doctrine of "*pay and recover*" was considered by the Supreme Court in the case of **Swaran Singh** (supra) wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy or invalid driving license of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Recently, the Apex Court in case of **Shamanna v. The Divisional Manager, the Oriental Insurance Company Limited and Others** 2018 ACJ 2163, following its earlier decision in **Swaran Singh** (supra), reiterated that *even if the driver does not possess any driving license, still the insurer is liable to pay the compensation and that he can recover the award amount from the owner of the offending vehicle after paying the amount.* In view of the said settled legal position, the order of the Tribunal, in this regard, needs to be modified.

[2] (2004) 3 SCC 297

For the reasons discussed above, the M.A.C.M.A. is allowed in part setting aside the finding of the learned Tribunal to the extent of fixing the liability jointly and severally upon the insurance company. However, following the doctrine of '*pay and recover*', the appellant-Insurance Company is directed to satisfy the award by paying the compensation amount to the claimants-respondent Nos. 1 to 5 herein, if not already paid, in the first instance and thereafter recover the same from the owner of the offending vehicle i.e., the respondent No. 6 herein, without initiating any separate proceedings. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.G.PRIYADARSINI,J

08.02.2023
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