(2011) 09 AP CK 0039

In the Andhra Pradesh High Court

Case No : MACMA No. 1538 of 2011

National Insurance Co. Ltd. APPELLANT

Vs

Karibilli Appalanarasa and Others RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Citation : (2013) 2 ACC 408

Hon'ble Judges : N.R.L. Nageswara Rao, J

Bench : Single Bench

Advocate : G. Vishweshwar Reddy, for the Appellant; Jayanthi S.C. Sekhar, Advocate for the Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

N.R.L. Nageswara Rao, J.—The appeal is filed by the Insurance Company questioning the liability for payment of compensation. The claim was made for a sum of Rs. 3,50,000 consequent on the death of deceased-Audinarayana in a motor accident. He was said to be "58" years and working as a mason and earning about Rs. 4,000 per month. On 23.7.1999 when the deceased was going on his cycle, a Tripper being driven by its driver in a rash and negligent manner dashed against the deceased, as a result of which, he received multiple injures and succumbed to death. The first petitioner is the wife and petitioners 2 to 4 are children. The first respondent is the driver and the second respondent is the owner and 3rd respondent is the Insurance Company and they are jointly and severally liable to pay the compensation. The appellant herein filed a counter contending that the driver of the vehicle was not having a proper licence and he was only authorised to drive a light motor cycle where as the Tipper is a heavy motor vehicle. The nature of the incident and the nature of the dependency are disputed. The lower Tribunal after considering the evidence on record held that the incident was due to the fault of the driver of the Tipper and considering the age and earning capacity, granted a compensation of Rs. 1,75,000 and fastened the liability to the appellant. The appellant herein questioned the liability on the ground that the driver had no valid driving licence.

2. From the evidence on record, the quantum of compensation granted by the lower Tribunal cannot be said to be excessive taking his age and earning capacity. The learned Counsel for the appellant contends from the evidence of RWs. 1 and 2, it clearly establishes that the driver of the Tipper was not having valid licence and he was only having a licence to drive a light motor vehicle and consequently the Insurance Company is not liable to pay the same. Reliance is placed on a decision reported in National Insurance Co. Ltd. Vs. Kaushalaya Devi and Others, But, the above judgment has no application to the facts of this case since in that case the driver was not having valid and effective driver licence and the deceased was travelling as a gratuitous passenger in a goods carriage but in this case the situation is different. The deceased was a third party and the driver of the Tipper was having a licence though it may be a licence to drive a particular vehicle. It is a case of driver having no licence to exonerate the liability of the Insurance Company. The lower Tribunal has rightly relied upon a decision reported in National Insurance Co. Ltd. Vs. Swaran Singh and Others, whereunder it was held that if the driver of the vehicle was having a particular type of licence, the Insurance Company cannot plead for exoneration of the liability on the ground that there is a breach of condition of policy. In that case it was further held that it is for the Insurance Company to prove that the owner of the vehicle has knowingly entrusted the vehicle to the driver who had no proper licence and in this case there is no such evidence and therefore there are no merits in this appeal and the appeal is liable to be dismissed. Accordingly, the appeal is dismissed. No costs.