

The Divisional Manager Vs. Chakka Linga Murthy and Others

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Court : Andhra Pradesh

Decided On : Sep-30-2010

Judge : C.V.Nagarjuna Reddy , J.

Appeal No. : Appeal No.2750 of 2003

Appellant : The Divisional Manager

Respondent : Chakka Linga Murthy and Others

Advocate for Pet/Ap. : Mr. Kota Subba Rao, Adv.

Judgement :

ORDER

The Divisional Manager of Oriental Insurance Company Limited, Visakhapatnam, filed this Civil Miscellaneous Appeal against the award dated 17.04.2003 in O.P.No.227 of 1998 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Court, Srikakulam (for short 'the Tribunal).

Respondent Nos.1 to 3, who are the legal heirs of one Chakka Simhachalam (hereinafter referred to as 'the deceased), who died in a motor accident occurred on 20.09.1997 filed O.P.No.227 of 1998 claiming a compensation of Rs.2,00,000/- for the death of the deceased. The deceased was the owner of a two-wheeler of Hero Honda make bearing registration No.AP 30 A 2119. He was stated to be traveling as a pillion rider while respondent No.4 was riding the two-wheeler when

the accident occurred leading to the death of the deceased. After finding that the accident occurred on account of the rash and negligent driving of respondent No.4, the Tribunal has passed the award granting in all a sum of Rs.1,82,000/- towards compensation with interest at 6% per annum making the appellant insurance company with whom the two-wheeler was insured and respondent No.4 jointly and severally liable. The Divisional Manager of the insurance company filed the present appeal assailing the said award to the extent of the insurance company being made liable jointly and severally with respondent No.4.

At the hearing, Sri Kota Subbarao, the learned standing counsel representing the appellant insurance company submitted that the deceased being the owner of the two-wheeler which was involved in the accident resulting in his death was not entitled to sue the insurance company before the Tribunal as the insurance company does not assure the risk for the death or bodily injury of the owner of the vehicle. In support of his submission, the learned standing counsel placed reliance on the judgment of the Apex Court in *Danraj vs. New India Assurance Co., Ltd.*,¹.

Sri K.S.R. Murthy, the learned counsel for respondent Nos.1 to 3 and Sri Aravala Rama Rao, the learned counsel for respondent No.4 sought to sustain the award of the Tribunal.

I have carefully considered the submissions of the learned counsel for the parties and perused the record.

In *Danraj* (1 supra), the Apex Court has held as under: "Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicles or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assure risk for death of or bodily injury to the owner of the vehicle."

On the admitted facts of this case, the ratio laid down in the above noted judgment applies in all fours to this case because the deceased being the owner of the two-wheeler, his risk is not covered by Section 147 of the Act or under a special policy such as personal accident coverage. In this view of the matter, the award of the

Tribunal to the extent of fastening liability on the appellant insurance company cannot be sustained and the same is accordingly set aside. It is, however, made clear that the award insofar as respondent No.4 is concerned, remains valid and enforceable. The amounts, if any, deposited before the Tribunal by the appellant in pursuance of the impugned award shall be returned to the appellant on its making appropriate application before the Tribunal.

Subject to the above directions, the Civil Miscellaneous Appeal is allowed.?¹
2005(1) ALD 51 (SC)

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