HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1346 of 2010

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act by the insurance company challenging the judgment and award dated 15.5.2006 passed in O.P. No.1094 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-Chief Judge, City Civil Courts, Hyerabad.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the present petition, in brief, are as follows: On 08.2.2002, at about 7.30 A.M., L.Pandugoud was proceeding on his Luna Moped. When he reached near Panama Crossroads, Vanastalipuram, Hyderabad, the driver of the lorry bearing No.AP 9T 7833 had driven the same in a rash and negligent manner and hit Pandugoud. The accident occurred due to the rash and negligent driving of the driver of the lorry against whom the Station House Officer, Vanastalipuram Police Station registered a case in crime No.64 of 2002 under Section 304A IPC. Due to the accident, Pandugoud (hereinafter referred to as, the deceased) sustained grievous head injury and died on the spot. By the time of the accident, the deceased was aged about 36 years and used to earn Rs.6,000/- per month. The first petitioner is the wife and petitioner Nos.2 to 4 are minor children and fifth petitioner is the mother of the deceased, and they are all dependants on the income of the deceased. The lorry, which belongs to the first respondent, was insured with the second respondent with effect from 27.10.2001 to 26.10.2002 and therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.4,00,000/- to the petitioners with interest and

costs.

4. The first respondent remained *ex parte*.

5. The second respondent filed counter denying all the averments made in the petition, *inter alia*, contending that the accident occurred due to the negligent riding of the Luna Moped by the deceased and there was no negligence on the part of the driver of the lorry. The driver of the lorry was not having valid and effective driving licence as on the date of the accident and therefore, this respondent is not liable to pay compensation to the petitioners. The amount of compensation claimed by the petitioners, under various heads, is highly excessive and exorbitant. The deceased was not an earning member as on the date of the accident. Hence, the petition may be dismissed against this respondent.

6. Basing on the above pleadings, the Tribunal framed the following issues:

1) Whether the accident resulting in the death of deceased took place due to rash and negligent driving of the driver of the lorry bearing No.AP 9T 7833?
2) Whether the petitioners are entitled for compensation, if so to what amount and from whom?
3) To what relief?

7. During the course of the trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A15 and X1were marked. On behalf of the respondents, R.Ws.1 to 3 were examined and Exs.B1 to B5 were marked.

8. On appreciating the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of

the lorry, which resulted in the death of the deceased, and allowed the petition by awarding compensation of Rs.4,00,000/- directing the second respondent to pay the same with interest at 6% per annum from the date of petition till the date of deposit and thereafter recover the same from the first respondent. Feeling aggrieved by the condition imposed by the Tribunal to pay to the petitioners and recover from the first respondent, the insurance company preferred the present appeal.

9. Heard Sri T.Ramulu, learned standing counsel for the appellant–insurance company and Sri K.Karandas, learned counsel for the respondents-claimants.

10. The contention of the learned standing counsel for the second respondent is two fold: (1) the Tribunal, having found that the first respondent had violated the terms and conditions of the policy, ought not to have directed the insurance to pay and recover the compensation; and (2) the amount of compensation awarded by the Tribunal is on higher side. ***Per contra***, learned counsel for the claimants submitted that the first respondent had not violated the terms and conditions of the policy. He further submitted that the amount of compensation awarded by the Tribunal is just and reasonable.

11. Now the points that arise for consideration in this appeal are:

(1) Whether the amount of compensation awarded by the Tribunal is just and reasonable or not? and

(2) Whether there are any grounds to interfere with the judgment and award passed by the Tribunal?

<u>Point No.1</u>:

12. Basing on the oral testimony of P.Ws.1 and 2 and Exs.A1 to A6, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry, which resulted in the death of the deceased. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. Having regard to the facts

and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the lorry, which resulted in the death of the deceased.

13. By the time of the accident, the deceased was aged about 36 years and the Tribunal has applied the multiplier '16'. Taking into consideration the material available on record, the Tribunal has taken the income of the deceased as Rs.3,000/- per month. Even by attending any work, the deceased may earn Rs.3,000/- per month. The Tribunal, after deducting 1/3rd of the income towards personal expenses of the deceased, awarded an amount of (Rs.2,000 X 12 X 16) Rs.3,84,000/- to the petitioners towards loss of dependency. The Tribunal also awarded Rs.15,000/- towards loss of estate, Rs.2,000/- towards funeral expenses and Rs.10,000/- towards loss of consortium. Viewed from any angle, the quantum of compensation awarded by the Tribunal is not on higher side. The amount of compensation awarded by the Tribunal is just and reasonable, and therefore, the contention of learned standing counsel for the second respondent that the amount of compensation awarded by the Tribunal is on higher side, has no legs to stand. Accordingly, the point is answered against the insurance company.

Point No.2:

14. The contention of the learned standing counsel for the second respondent is that the first respondent had violated the terms and conditions of the policy and therefore, the Tribunal ought to have completely absolved the liability of the second respondent. The case of the second respondent is that the driver of the crime vehicle was not having valid and effective driving licence to drive the crime vehicle as on the date of the accident. To prove the violation of terms and conditions of the policy by the first respondent, the second respondent

mainly relied on the oral testimony of R.Ws.1 to 3 and Ex.X1. The oral testimony of R.Ws.1 to 3 coupled with Ex.X1 clearly reveals that the driver of the lorry was having driving licence to drive the light motor vehicle (LMV) non-transport and transport as on the date of the accident. The crime vehicle is a heavy goods vehicle. Thus, the fact remains that the driver of the crime vehicle was not having valid and effective driving licence to drive the vehicle in question as on the date of the accident. At this juncture, learned counsel for the claimants has drawn my attention to **National Insurance Co. Ltd., v Swaran Singh**[1]. As per the principle enunciated in the said case, the insurance company has to satisfy the awarded amount and then recover the same from the insured, in case of violation of terms and conditions of policy.

15. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the Tribunal has not committed any illegality or irregularity while directing the second respondent to pay the awarded amount to the petitioners and recover the same from the first respondent. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal. Accordingly, the point is answered against the insurance company.

16. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in the appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 13.4.2015
YS

[1] 2004 ACJ 1