THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

-

M.A.C.M.A.No.1275 of 2009

JUDGMENT:

Challenging the compensation awarded in MVOP No.700 of 2006 dated 09.09.2008 by the Chairman, MACT-cum-I Additional District Judge, Kadapa (for short 'the Tribunal'), the second respondent—ICICI Lombard General Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) Claimant Nos.1 and 2 are parents, claimant Nos.3 to 5 are brother and sisters of deceased—KChand Basha. The case of the claimants is that on 08.04.2006 at about 2.40 PM when the deceased along with one Sunkesula Siddu Hussain was proceeding on a motorcycle bearing No.AP 04 K 3117 towards C.K.Dinne from Moolavanka for brining water coconuts and when they reached near Mandal Revenue Office Cross road at the western outskirts of C.K.Dinne on Moolavanka—Yellatur main road, one tractor bearing No.AP 04 V 3164 being driven by its driver in a rash and negligent manner and at high speed and dashed against the motorcycle in the opposite direction. Due to which the deceased fell down on the road and died on the spot. Due to sudden demise, the family members of the deceased became destitutes. It is averred that tractor driver was responsible for the accident. On these averments the claimants filed MVOP No.700 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against respondents 1 and 2, who are the owner and insurer of the offending tractor and claimed Rs.6,00,000/- as compensation under different heads mentioned in OP.

b) R1—owner filed counter contending that there is no negligence on the part of tractor driver and deceased himself was liable for causing the accident. He further contended that as the vehicle in question was insured with 2nd respondent/Insurance Company and the policy was in force at the time of accident, the Insurance Company is liable to pay compensation.

c) R2—Insurance Company filed counter and opposed the petition contending that there is contributory negligence on the part of rider of the motorcycle, as he drove the vehicle in a rash and negligent manner and at high speed and dashed against the opposite coming tractor. R2 contended that petition is bad for non-joinder of necessary parties, as the owner of the motorcycle and its Insurance Company are necessary parties to the above proceedings. R2 further contended that tractor driver had no valid driving licence and compensation claimed is excessive and exorbitant and prayed for dismissal.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A5 were marked on behalf of claimants. RW1 was examined and Exs.B1 and B2 were marked on behalf of respondents.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.1,72,000/- with costs and interest at 6% p.a. against respondents 1 and 2 under different heads as follows:

Loss of dependency Rs. 1,60,000-00

Funeral expenses Rs. 10,000-00

Love and affection Rs. 2,000-00

Total Rs.1,72,000-00

Hence, the appeal by Insurance Company.

3) The parties in this appeal are referred as they arrayed before the lower Tribunal.

4) Heard arguments of Sri Ravi Shankar Jandhyala, learned counsel for appellant/Insurance Company and Sri J.Seshagiri Rao, learned counsel for respondents 1 to 5/claimants. Notice sent to R6/owner was served but no representation on his behalf.

5a) Fulminating the award, learned counsel for appellant/Insurance Company firstly argued that Tribunal erred in fastening liability on Insurance Company by negativing its contention that driver of the offending tractor had no valid and effective licence. He argued that investigation and report filed by Investigator appointed by the Insurance Company revealed that the tractor driver—Papana Siva Reddy had no valid driving licence and hence on this count the Tribunal ought to have exonerated the Insurance Company for breach of policy.

b) Secondly, criticizing the quantum of compensation as high side, he argued that Tribunal ought to have deducted one half from the notional income of the deceased towards his personal and living expenditure following the decision of the Apex Court in ***Sarla Verma vs. Delhi Transport Corporation*** but instead it deducted only $1/3^{rd}$ and further, the Tribunal for selection of multiplier ought to have taken the average age of the parents of the deceased but it took the age of the deceased and in view of aforesaid errors the compensation was unduly escalated. He thus prayed to allow the appeal and prayed for exoneration of Insurance Company at first instance and alternatively for re-assessment of compensation.

6a) Per contra, learned counsel for respondents/claimants while supporting the award argued that except contending that tractor driver had no valid driving licence, the Insurance Company has not established the said fact and it has not even filed the so-called report or examined the said investigator and so the Tribunal rightly rejected the said contention.

b) Regarding quantum of compensation, learned counsel argued that in fact compensation awarded was already a low figure and the same need not be revised. He submitted that though one half is to be deducted from the gross annual income of the deceased bachelor still in view of the fact that he had large number of dependant family members the said norm need not be followed.

c) He further argued that age of the deceased bachelor has to be taken into consideration for multiplier as per the Division Bench judgment of our High Court reported in ***N.Surender Rao vs. B.Swamy*** and therefore, it is not correct to argue otherwise. He thus prayed to allow the appeal.

7) In the light of above rival arguments, the point for determination is:

"Whether the award passed by the Tribunal is factually and legally sustainable?"

8 a) **POINT**: Accident, involvement of tractor bearing No.AP 04 V 3164 and death of deceased are admitted facts. The first contention of appellant is that tractor driver had no valid driving licence and for the breach of the policy committed by the insured, the Insurance Company deserves exoneration. I find no much force in the argument. It is trite law that the burden will be always on Insurance Company to establish the breach of any of the terms of policy. If it is its case the driver had no valid driving licence and insured thereby committed breach of policy, the Insurance Company has to establish this fact by cogent evidence. As rightly argued, except contending that investigator's report revealed that the driver had no valid driving licence, the Insurance Company neither examined the said investigator nor filed his report for perusal of the Court. Further, it has not issued any notice to the owner and driver for cause production of driving licence. Having not made any positive efforts the Insurance Company cannot claim to have discharged its burden. The lower Tribunal rightly rejected its contention.

b) Coming to quantum of compensation, the Tribunal granted a total compensation of Rs.1,72,000/- under different heads as mentioned supra, out of which it awarded Rs.1,60,000/- towards loss of dependency by taking the notional income of the deceased as Rs.15,000/- per annum and after deducting $1/3^{rd}$ therefrom it multiplied the residue with multiplier '16' selected on the basis of the age of the deceased which is being disputed by the appellant.

c) It is true that in ***Sarla Verma***'s case (1 supra) it was observed that in case of bachelor normally one half is to be deducted towards his personal and living expenditure. However, in the same decision it was observed that where number of dependant family members of the deceased bachelor is large, $1/3^{rd}$ can be deducted in stead of one half. In the instant case, the dependants are five in number and so the deduction of 1/3rd made by the tribunal can be said to be reasonable.

d) Then the contention of appellant that average age of the parents of the deceased should have been taken for selection of multiplier is concerned, the same cannot be appreciated in view of ruling of Division Bench of this High Court in ***Surender Rao***'s case (2 supra) holding that age of the deceased bachelor shall alone be taken into consideration but not age of his dependant parents. So at the outset, none of the grounds raised by the appellant merits consideration.

9) In the result, this MACMA filed by the Insurance Company is dismissed by confirming the award passed by the Tribunal in MVOP No.700 of 2006. No costs in the appeal.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 07.10.2015

Murthy