THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1227 of 2009

JUDGMENT:

Aggrieved by the Award dt:16.12.2008 in O.P.No.266 of 2006 passed by the Chairman, M.A.C.T-cum-District Judge, Nizamabad (for short 'the Tribunal'), the 2nd respondent/Insurance Company preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 04.03.2006 at about 7:30 pm, when the deceased—Moulasha was travelling in Auto bearing No.AP 25 U 8522 from Saloora towards Khajapur side and when it reached near Saloora village outskirts, the driver drove the auto at high speed and in a rash and negligent manner and dashed against a tractor which was coming from opposite direction. In the resultant accident, the deceased came under the front wheel of the tractor and succumbed to injuries and other inmates of the auto sustained injuries. It is averred that accident was occurred due to rash and negligent driving by the driver of the offending auto. On these pleas, the claimants filed O.P.No.266 of 2006 under Section 166(1)(c) of Motor Vehicles Act, 1988 (for short "the Act") against respondent Nos.1 and 2, who are owner and insurer of the offending auto and claimed Rs.8,00,000/- as compensation.

b) Respondent No.1 remained *ex parte*.

c) The second respondent/Insurance Company filed counter denying all the material averments and urged to put the claimants in strict proof of the same. R.2 further contended that the driver of the auto had no valid driving licence to drive the auto at the time of accident and that the driver of the auto had committed breach of the terms of the policy. R.2 contended that owner and insurer of the tractor are necessary parties to the petition and that claim of the claimants is highly excessive and exorbitant and prayed to dismiss the OP.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A7 were marked on behalf of claimants. RWs.1 and 2 were examined and Exs.B.1 to B.5 were marked on behalf of respondents.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.4,28,000/- with proportionate costs and interest @ 9% p.a against respondents 1 and 2. Liability is concerned, the Tribunal held that the R.2/Insurance Company has to pay compensation at first and recover the same from R.1/owner of the auto.

Hence, the appeal by Insurance Company.

3) The parties in the appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri A.Ramakrishna Reddy, learned

counsel for appellant/Insurance Company and Sri P.Radhive Reddy, learned counsel for respondent Nos.1 and 2/claimants. Though notice to R.3/owner of the vehicle was served but there is no representation on his behalf, hence treated as heard.

5 a) Challenging the award learned counsel for appellant/Insurance Company firstly argued that the Tribunal grossly erred in fastening the liability on the Insurance Company though under 'pay and recover' principle instead of totally exonerating the Insurance Company. He argued that a number of breaches were committed by the insured such as the driver had no valid and effective driving licence to drive the auto and further the auto was over-boarded with more than 9 passengers against its seating capacity of 3 + 1 which contributed for the accident and though the Insurance Company placed the cogent evidence before the Tribunal exposing gross violation of the terms of the policy committed by the insured, the Tribunal on erroneous appreciation of facts and evidence, held as if the driver was competent to drive the passengers auto and directed Insurance Company to pay and recover the compensation.

b) Nextly, he argued that the interest of 9% p.a awarded by the Tribunal is highly excessive and against the norms.

He thus prayed to allow the appeal.

6) Per contra, learned counsel for respondents/claimants supported the award and prayed for dismissal of the appeal.

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

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

8) **<u>POINT</u>**: The accident, involvement of the auto bearing No.AP 25 U 8522 and tractor bearing No.AP 25 D 9412 and death of deceased are all admitted facts. The bone of contention is about the liability of Insurance Company.

9) The liability is concerned, learned counsel for appellant repudiated the liability of Insurance Company on the main plank of argument that the owner and driver of the vehicle by their violations, have contributed for the accident inasmuch as they over-boarded the vehicle with more passengers and further the driver had no valid driving licence to drive the auto and thereby the liability of the Insurance Company ceased.

a) In this context, a perusal of Ex.B.2—copy of R.C extract of the offending auto shows that at Column No.19, its seating capacity is mentioned as ‘4’. In Ex.B.4—permit issued by R.T.A, Nizamabad also the seating capacity of the auto is mentioned as ‘4’. Be that it may, the contention of RW.1 on behalf of the Insurance Company was that ‘9’ passengers travelled in the auto in violation of R.C permit. Perhaps RW.1 contended so basing on Exs.A.1 and A.2 wherein it was mentioned that about 8 persons travelled in auto and got injured. So there is some force in the contention of appellant/Insurance Company that there is a violation of R.C permit. However, the point is whether on that ground the Insurance Company can repudiate its liability towards third parties when the policy was in force. I am afraid, it is not a case where the auto was plied without any permit. It is only an infraction of the permit sofaras seating capacity is concerned. In such an event, the Insurance Company cannot totally repudiate its liability.

b) Then the second contention on which the Insurance Company claims exemption is that the driver drove the auto without valid and effective driving licence. As per Ex.A.3—driving licence particulars produced by RW.1, the driver was having driving licence to drive Motor Cycle With Gear (M.C.W.G), Light Motor Vehicle (L.M.V) and Auto Rickshaw (A.R) of non-transport type for the period from 04.04.2005 to 03.04.2025. The auto being a passenger vehicle and as the driver had only licence to drive non-transport vehicles, it can be said that he had no effective driving licence. Again the question is, by that count the Insurance Company can totally repudiate its liability. As held by the Apex Court in the case of ***National Insurance Company Limited vs. Swaran Singh***[1], in such an event, for the violation of the driving licence condition, the Tribunal can direct the Insurance Company to pay compensation at first and then recover from the insured. In fact following the said principle, the Tribunal ordered the same. Therefore, the decision of the Tribunal cannot be carped.

10) Then what remains is the rate of interest. I find force in the argument of the appellant that the rate of interest is on high side. Hence, it is scaled down to 7.5% p.a.

11) In the result, this M.A.C.M.A is partly allowed and while upholding the compensation awarded by the Tribunal, the rate of interest is scaled down from 9% p.a to 7.5% p.a throughout. The appellant/Insurance Company shall at first pay compensation and then recover the same from the insured. It shall pay compensation amount within two (2) months from the date of this judgment failing which execution can be taken out.

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

U.DURGA PRASAD RAO, J

Date: 17.07.2015
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[1] AIR 2004 SC 1531