HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.3931 of 2009

JUDGMENT:

This appeal is filed by the insurance company under Section 173 of the Motor Vehicles Act challenging the judgment and award dated 20.6.2009 passed in M.V.O.P. No.1562 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad.

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 07.10.2004, B.Krishnaiah along with his friend Bhaskara Chary was proceeding on motor cycle bearing No.AP 28 2191 from Shadnagar towards Parigi. When they reached Kondurg outskirts, the driver of the jeep bearing No.AP 22U 5063 had driven the same in a rash and negligent manner and hit the motor cycle on which Krishnaiah was travelling as pillion rider. The accident occurred due to the rash and negligent driving of the driver of the jeep against whom the Station House Officer, Kondurg Police Station registered a case in Crime No.103 of 2004 under Sections 337 and 338 IPC. Due to the injuries received in the accident, Krishnaiah (hereinafter referred to as, the deceased) died. After the death of deceased, section of law in criminal case was altered to Section 304-A IPC. By the time of the accident, the deceased was aged about 45 years and used to earn Rs.10,000/- per month while working as A.E.O., in Acharya N.G.Ranga Agricultural University. The petitioners are dependants on the income of the deceased. The jeep, which belongs to the first respondent, was insured with the second respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.15,00,000/- to the petitioners with interest and costs.

4. The first respondent remained *ex parte*.

5 . The second respondent filed counter and additional counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the rider of the motor cycle and there was no negligence on the part of the driver of the jeep. The driver of the jeep was not having

valid and effective driving licence as on the date of the accident and therefore, there is no obligation on the part of this respondent to indemnify the liability of the owner of the jeep. The amount of compensation claimed by the petitioners, under various heads, is highly excessive and exorbitant. Hence, the petition is liable to be dismissed so far as this respondent is concerned.

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

1. Whether the accident took place on 07.10.2004 at about 13.00 hours, due to rash and negligent driving of the jeep bearing No.AP 22U 5063 by it's driver?
2. Whether the petitioners are entitled to claim 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 to 4 were examined and Exs.A1 to A8 were marked. On behalf of the respondents, R.W.1 was examined and Ex.B1 was marked.

8. Basing on 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 jeep, which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.1,78,800/- with interest at 7.5% per annum from the date of petition till the date of deposit, directing the respondent Nos.1 and 2 jointly and severally pay the compensation. Feeling aggrieved by the judgment and award, the insurance company preferred the present appeal.

9. Heard Sri K.Kishore Kumar Reddy, learned counsel for the appellant–insurance company. Though notices were sent to the claimants, to the addresses given by them in their original petition, they were returned unserved with postal endorsement, "*No such House Number*". Hence, I am inclined to dispose of the appeal on merits.

10. Learned counsel for the appellant submitted that the crime vehicle was not validly insured with the second respondent as on the date of the accident and therefore, the second respondent is not liable to pay compensation to the claimants.

11. Now the point that arises for consideration in this appeal is:

> *Whether the crime vehicle was insured with the second respondent as on the date of the accident or not?*

<u>Point</u>:

12. The Tribunal arrived at a conclusion that the accident occurred due to negligent driving of the deceased as well as driver of the jeep. The finding of the Tribunal on issue No.1 became final so far as petitioners are concerned in view of non filing of appeal.

13. The claimants have not filed appeal or cross-objections challenging the quantum of compensation. Therefore, the findings recorded by the Tribunal, on issue No.2, became final. The second respondent is not disputing the quantum of compensation awarded by the Tribunal. A perusal of the record clearly reveals that the Tribunal, basing on the salary certificate of the deceased, assessed his income at Rs.10,000/- per month. The Tribunal also assessed the income of the deceased from his agricultural lands at Rs.6,000/- per annum. The annual income of the deceased comes to Rs.1,26,000/-. After deducting 1/3rd of the income towards personal expenses of the deceased, the Tribunal has determined contribution of the deceased to his family at Rs.84,000/-. The Tribunal rightly applied multiplier 7.68 and arrived at a conclusion that the claimants are entitled for an amount of Rs.3,57,560/- towards compensation. In view of the finding of the Tribunal on issue No.1, the respondent Nos.1 and 2 jointly and severally pay 50% of the compensation i.e., Rs.1,78,780/-, which was rounded of to Rs.1,78,800/- with interest and costs. The petitioners have to forego 50% of the compensation amount.

14. The second respondent has taken the plea in the counter that the crime vehicle was not insured with it. During the course of trial, the first respondent examined himself as R.W.1. As per the testimony of R.W.1, the jeep bearing No.AP 22U 5063, which belongs to him, was insured with second respondent – insurance company. Ex.B1 is the insurance policy. A perusal of Ex.B1 reveals that the jeep in question was insured with the second respondent with effect from 17.10.2003 to 16.10.2004. The policy was in force as on the date of the accident i.e., on 07.10.2004. The second respondent did not examine anybody to establish that Ex.B1 is a fake policy. If really Ex.B1 was not issued by the second respondent, what prevented it to examine concerned person by producing relevant records. Mere taking the plea in the counter by itself would not amount to proof of the stand taken by the second respondent. The second respondent failed to establish that Ex.B1 is a fake policy. The Tribunal rightly considered the material available on record and arrived at a conclusion that Ex.B1 was in force as on the date of the accident. The Tribunal has assigned cogent and valid reasons to its finding. I am fully agreeing with the finding

recorded by the Tribunal that the crime vehicle was insured with the second respondent as on the date of the accident. The first respondent being the owner of the jeep is vicariously liable for the negligent acts of his driver during the course of employment. The second respondent has to indemnify the liability of the first respondent as Ex.B1 was in force as on the date of the accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. There are no merits in the appeal. The point is accordingly answered.

15. In the result, the appeal is dismissed. There shall be no order as to costs. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 30.3.2015

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