THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1024 of 2009

JUDGMENT:

Aggrieved by the Award dated 29.08.2008 in MVOP No.8 of 2005 passed by the Chairman, M.A.C.T-cum-V Addl. District and Sessions Judge, Kurnool at Nandyal (for short "the Tribunal"), the Claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a. The claimants case is that on 29.04.2004 at about 5.00 am, the first claimant along with his family members i.e., wife, children and deceased- mother started in an Indica Car bearing No.AP 21 H 5681 from Peddakottala village and on the way near Reddypalle Cheruvu Katta of Pullampeta Mandal on Kodur-Rajampet high way, a Eicher Van bearing No. AP 04 U 5662 being driven by its driver in a rash and negligent manner came in opposite direction and dashed against the Car. Thereby, the claimants and other persons who were travelling in the Car sustained grievous injuries and the mother of first claimant died on the way to hospital. It is averred that Van driver was responsible for the accident. On these averments, the claimants being the sons of the deceased, filed MVO.P.No.08 of 2005 under Sections 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against respondent Nos. 1 and 2, who are the owner and insurer of the Eicher Van and Respondent Nos. 3 and 4, who are owner and insurer of the Car and claimed Rs.3,00,000/- as compensation.

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

c. Respondent No.2 filed Counter denying all material averments and urged to put the claimants in strict proof. It contended that the accident was occurred due to the negligence of the driver of Indica Car and the said driver and also the driver of van had no valid and effective driving licence at the time of accident and hence the insurer is not liable to pay any compensation. It further contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

d. Respondent No.3 and 4 filed Counters denying all material averments and urged to put the claimants in strict proof. They contended that the accident was occurred due to the negligence of the driver of Eicher Van but not due to the driver of the Car and the driver of the car was having valid and effective driving licence at the time of accident and hence, the respondent Nos.1 and 2 alone are liable to pay the compensation.

e. Common evidence was adduced in this O.P and other connected O.Ps. On behalf of petitioners in all the O.Ps, PWs.1 to 4 were examined and Exs.A.1 to A.16 and Exs.X1 to X.5 were marked. On behalf of respondents, RWs.1 to 4 were examined and Exs.B.1 and B.2 were marked.

f. The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.2,07,000/- with costs and interest at 7.5% p.a under different heads as follows against 1st respondent and dismissed the claim against other respondents:

Loss of dependency Rs. 2,00,000-00

Funeral Expenses Rs. 2,500-00

Loss of estate Rs. 2,500-00

Transport Charges Rs. 2,000-00

Total Rs. 2,07,000-00

Hence, the appeal by Claimants.

3) Heard arguments of Sri B.S.Reddy, learned counsel for appellants/Claimants and Smt.S.A.V.Ratnam, learned counsel for respondent No.2. Notices sent to respondents 1, 3 and 4 were returned unserved.

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

5 a) Opposing the award learned counsel for the appellant/claimant firstly argued that the Tribunal erred in totally exonerating the 2nd respondent/ Insurance Company holding that the driver of the van possessed licence to drive Light Motor Vehicle (LMV) (Transport) and the crime vehicle was a HMV. He argued that as the Eicher van is a transport and Medium Motor Vehicle (MMV) and the driver possessed a valid LMV (Transport) licence which is slightly a different one as the claim relates to third party and policy was in force, the Tribunal ought to have ordered Insurance Company to pay compensation and recover from the insured. In this context, he relied upon the following decisions:

i. ***S. Iyyapan vs. United India Insurance Company Limited and other***

ii. ***Bajaj Allianz General Insurance Co. Ltd. vs. Kalaguri Naganna and others***

b) Secondly, he argued that compensation awarded is low and inadequate. Expatiating it, he submitted that the deceased was getting monthly pension of Rs.2,000/- and was also looking after agriculture and getting an income of Rs.6,000/- per month, but the Tribunal failed to consider the same and thereby compensation was drastically reduced.

He thus prayed to allow the appeal and fasten liability on the Insurance Company and also enhance compensation suitably.

6) Per contra, learned counsel for second respondent/Insurance Company, while supporting the award contended that the driver possessed licence to drive only LMV(transport) whereas the crime vehicle was Heavy Motor Vehicle(HMV) and therefore, he was not authorised to drive the type of vehicle involved in the accident and the owner knowingly allowed such driver to drive the vehicle and thereby committed breach of the terms of the policy and hence, the lower Tribunal rightly exonerated the Insurance Company from the liability. Learned counsel further argued that the compensation awarded under different heads was just and reasonable inasmuch as the deceased was old-aged lady of about 60 years and hence, her attending agricultural works and earning any income is a myth and considering all these aspects the Tribunal rightly fixed a just compensation which need not be reconsidered in this appeal. Learned counsel thus prayed to dismiss the appeal.

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

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

8) **POINT**: The accident, involvement of the car bearing No.AP 21 H 5681 and van bearing No.AP 04 U 5662 and death of Jojamma are all admitted facts.

a) The first contention of appellant is that the Tribunal ought to have directed Insurance Company to pay compensation and recover from the insured. In this context, a perusal of the evidence shows that the accident was occurred due to the fault of driver of the tempo Eicher AP 04 V 5662 namely P.Krishnamraju. As per Ex.X.1—driving licence extract, the said driver holds driving licence to drive LMV (transport) for the period 10.05.1988 to 24.02.2008. Whereas, the crime vehicle is a tempo Eicher and a transport goods vehicle. As per the evidence of RW.4—the-then M.V.Inspector, Rajampet, the crime vehicle i.e. Eicher is a medium goods vehicle and it is a transport vehicle. So from the record, it is clear that the driver was not authorised to drive Medium Motor Vehicle as he possessed licence to drive only LMV (transport).

9) Now the point is whether on this count, the Insurance Company can be totally exonerated from the liability. In ***S.Iyyappan***'s case(1 supra), in similar circumstances when the driver held licence to drive Light Motor Vehicle but drove a Commercial Vehicle, the Apex Court taking into consideration that the policy was in force and the claim was of a third party, directed the Insurance Company to pay compensation and then recover the amount from the insured. The ratio in that case squarely applies to the instant case, because in this case also the claim is that of a third party and the policy was in force.

a) In ***Kalaguri Naganna***'s case(2 supra) also, this Court having observed that the driver who was driving auto a transport vehicle, possessed licence to drive only a non-transport vehicle, held that mere holding a different driving licence cannot be regarded as a fundamental breach and directed the Insurance Company to pay compensation and recover from the insured.

b) So going by the above precedents, the Insurance Company can be directed to pay compensation and recover from the insured.

10) The next contention of the appellants is that the compensation awarded is low and inadequate. A perusal of award shows that the Tribunal taking into consideration the monthly pension amount of Rs.2,414/- of the deceased and her holding agricultural lands, fixed her monthly income at Rs.5,000/- and going by her age of 60 years, applied '5' as multiplier and thus arrived loss of dependency at Rs.2,00,000/- (Rs.5,000/- x 12 x 5 x 2/3). To this amount, the Tribunal added Rs.2,500/- each towards funeral expenses and loss of estate and another sum of Rs.2,000/- towards transport charges and awarded a total compensation of Rs.2,07,000/-. In my view, except the compensation under the head funeral expenses, the amount

awarded under other heads are quite reasonable. Following the judgment of the Apex Court in ***Rajesh vs. Rajbir Singh***, the compensation for funeral expenses is enhanced to **Rs.25,000/-.** Thus the total compensation payable to the claimants under different heads is as follows:

Loss of dependency Rs. 2,00,000-00

Funeral Expenses Rs. 25,000-00

Loss of estate Rs. 2,500-00

Transport Charges Rs. 2,000-00

Total Rs. 2,29,500-00

Thus the compensation is enhanced by Rs.22,500/- (Rs.2,07,000/- minus Rs.2,29,500/-)

11) In the result, the MACMA filed by the claimants is allowed and ordered as follows:

a. The compensation awarded by the Tribunal is enhanced by Rs.22,500/- with proportionate costs and interest @ 7.5% per annum from the date of OP till the date of realization against respondents 1 and 2 only; and

b. Respondent No.2/Insurance Company in the OP is directed to deposit the compensation amount within two (2) months from the date of this judgment at first and recover the same from the respondent

No.1/owner/insured in the OP treating this judgment as decree, failing which execution can be taken out against them.

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

U. DURGA PRASAD RAO, J

Date: 13.11.2015

eha/kvrm