

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.71 OF 2013

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and award dated 05.11.2012 passed in M.V.O.P.No.548 of 2009 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-V Additional District Judge, Karimanagar.

2. The parties to this appeal will hereinafter be referred to as they are arrayed before the Tribunal, to avoid confusion.

3. The facts leading to filing of the appeal are briefly as follows: On 16.5.2004, Somarapu Mallaiah was taking bullock cart to his house in Nagampet village of Jammikunta Mandal in Karimnagar District. When Mallaiah and bullock cart reached Nagampet dam, the rider of Hero Honda Splendor motor cycle bearing No.AP 36 G 9195 had driven the same in a rash and negligent manner and dashed Mallaiah. The accident occurred due to the rash and negligent driving of the rider of the motor cycle against whom the Station House Officer, Jammikunta Police Station registered a case in Crime No.107 of 2004 under Section 304A IPC. Due to the accident, Mallaiah (hereinafter referred to as, the deceased) sustained grievous injuries on various parts of the body and died on the same day while undergoing treatment in M.G.M. Hospital, Warangal. By the time of the accident, the deceased was aged 55 years and used to earn Rs.8,000/- per month as agriculturist. The first petitioner is the wife and second petitioner is the daughter of the deceased, and they are dependants on the earnings of the deceased. The first respondent is the rider, second respondent is the owner and respondent Nos.3 and 4 are insurers of the Hero Honda Splendor motor cycle. Therefore, the respondent Nos.1 to 4 are jointly and severally liable to pay compensation to the

petitioners.

4. The first respondent remained exparte. The right of respondent Nos.2 and 4 to file counter was forfeited. The third respondent filed counter denying all the averments made in the petition including the manner of the accident. This respondent does not aware of the criminal proceedings launched in this case. The petitioners are not entitled to claim compensation. The rider of the motor cycle was not having valid and effective driving licence as on the date of the accident; therefore, there is no obligation on the part of this respondent to indemnify the liability of the second respondent. The amount of compensation claimed by the petitioners, under various heads, is highly excessive and exorbitant. Hence the petition may be dismissed.

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

1. Whether the accident took place due to the rash and negligent driving of offending vehicle i.e., Hero Honda Splendor motor cycle bearing No.AP 36G 9195 by its driver?
2. Whether the petitioners are entitled to compensation and if so, to what amount and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, P.W.1 was examined and Exs.A1 to A5 were marked. On behalf of the third respondent, R.Ws.1 to 3 were examined and Exs.B1 to B9 were marked.

7. On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident was occurred due to the rash and negligent driving of the rider of the motor cycle and allowed the petition by awarding a compensation of Rs.2,18,000/- with interest at 7.5% per annum from the date of the petition till the date of deposit. Feeling aggrieved by the

judgment and award of the Tribunal, the third respondent–Insurance company preferred the present appeal.

8. The contention of the learned counsel for the third respondent is two fold:

1. the Tribunal, while arriving at a conclusion that the rider of the motor cycle was not having valid and effective driving licence, ought not to have fastened the liability on the third respondent; and
2. the Tribunal has not considered the oral and documentary evidence adduced on behalf of the third respondent in right perspective.

Per contra, learned counsel for the petitioners submitted that even though the rider of the motor cycle was not having valid and effective driving licence, the Insurance Company has to indemnify the liability of the owner of the motor cycle. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

9. Now the point that arises for consideration in this appeal is:
Whether the Tribunal has committed error while fastening the liability on the third respondent?

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Point:

10. There is no much dispute between the parties with regard to the manner of the accident and factum of death of the deceased. By examining P.W.1 and marking Exs.A1, A2, A3, A4 and A5, the petitioners clearly established that Somarapu Mallaiah died on 16.5.2004 in a motor vehicle accident. The material available on record clinchingly establishes that the accident occurred due to the rash and negligent driving of the rider of the motor cycle, which resulted in the death of the deceased. The Tribunal has assigned cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. Hence, I am of the

considered opinion that the accident occurred due to the rash and negligent driving of the rider of the motor cycle, which resulted in the death of the deceased.

11. By the time of the accident, the deceased was aged about 55 years. The Tribunal rightly assessed the income of the deceased as Rs.3,000/- per month. After following due procedure, the Tribunal awarded a total amount of Rs.2,18,000/- towards the compensation. The compensation awarded by the Tribunal is just and reasonable.

12. The predominant contention of the learned counsel for the third respondent is that the rider of the motor cycle was not having valid and effective driving licence as on the date of the accident. The petitioners produced Ex.B7 to prove that the rider of the motor cycle was having valid and effective driving licence as on the date of the accident. Ex.B8 is the driving licence issued in the name of G.Anitha. I have carefully perused Ex.B7 driving licence and Ex.B8 driving licence. Ex.B7 does not bear the seal and signature of the office, which issued the driving licence. As per the testimony of R.W.3, the driving licence bearing No.2868/WGL/2001 was issued in the name of G.Anitha. The oral testimony of R.Ws.1 to 3 coupled with Ex.B8 clearly reveals that the Ex.B7 driving licence produced by the petitioners is not a genuine one. The oral and documentary evidence available on record clearly reveals that Ex.B7, which is said to be the driving licence of rider of the Hero Honda Splendor motor cycle, produced by the petitioners is a fake one.

13. The crucial question that falls for consideration is whether the Insurance Company is liable to pay compensation even if the rider of the motor cycle is having a fake driving licence. In order to resolve the issue, this Court is placing reliance on **National Insurance Co. Ltd v Swaran Singh**^[1]. As per the principle enunciated in the case cited supra, even if the driver of the crime vehicle is having fake driving

licence, the Insurance Company has to indemnify the liability of the owner of the vehicle and then recover the same from the owner.

14. 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 finding of the Tribunal that the third respondent has to pay compensation to the petitioner is not legally sustainable. Hence, I am inclined to modify the award to the effect that the third respondent shall satisfy the award first and then proceed against the second respondent to recover the same by approaching Executing Court without there being any necessity for filing a regular suit for recovery.

15. With the above modification, the MACMA is allowed in part. Consequently, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 19.08.2015.

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[\[1\]](#) (2004) 3 SCC 297 : 2004 ACJ 1