

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.182 of 2013

JUDGMENT:

1 Respondent in M.V.O.P.No.176 of 2010 on the file of
Chairman, Motor Accidents Claims Tribunal-cum-II Additional
District Judge, Ongole filed the present appeal under Section
173 of the Motor Vehicles Act, challenging the Judgment and
award dated 30.08.2012 passed in the said O.P. wherein and
whereby an amount of Rs.1,00,000/- was awarded as
compensation as against the claim of Rs.3.00 lakhs.

2 For the sake of convenience, parties to this appeal will
hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly,
are as follows:

4 On 26.03.2009 Moshe was proceeding along with
another person on his motorcycle bearing No.AP 27 P T/R 6432
to Darsi from podili village. When they reached near Sripathi
Nagar on Podili – Darsi road, the rider of one Panther
motorcycle came in opposite direction and dashed against the
motorcycle of Moshe. In the said accident, the rider of the
Panther motorcycle received multiple injuries and died on the
same day. Moshe (hereinafter referred to as 'the deceased')
died on 01.04.2009 while undergoing treatment. The accident
occurred due to the rash and negligent driving of the deceased
against whom, the Station House Officer, Podili P.S. registered
a case in Cr.No.66 of 2009 under Section 304-A of IPC. By the
time of death, the deceased was aged 22 years and used to
earn Rs.4,000/- per month. First petitioner is wife and petitioner

Nos.2 and 3 are parents of the deceased and they are dependents on the income of the deceased. The motorcycle bearing No.AP 27 P T/R 6432 was insured with the respondent at the time of accident. Hence the petitioners filed the claim petition seeking compensation of Rs.3.00 lakhs from the respondent.

5 The respondent filed counter denying the various averments made in the petition including the manner of accident. The motorcycle bearing No.AP 27 P T/R 6432 which belongs to the deceased was insured with this respondent company. This respondent issued policy which covers the risk of own damages to the vehicle and also third party risk. But the policy does not cover the risk of the deceased who is the owner of the motorcycle. The Motor Accidents Claims Tribunal is meant for adjudicating the claims of third parties. The Tribunal has no jurisdiction to entertain the petition. Hence the petition may be dismissed.

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

- i. Whether the deceased Pari Moshe died as a result of injuries received in the accident between his motorcycle bearing No.AP 27 P T/R 6432 and another motorcycle on 26.03.2009 near Sripathi Nagar on Podili – Darsi road?
- ii. Whether the petitioners are entitled to claim compensation, If so, to how much amount?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioners P.W.1 was examined and Exs.A.1 to A.4 were marked. On behalf of the respondent R.W.1 was examined and Exs.B.1 to B.4 were marked.

8 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the petitioners need not prove rash and negligence on the part of the driver of the crime vehicle as the petition is filed under Section 163-A of the M.V.Act and allowed the petition by awarding compensation of Rs.1.00 lakh. Feeling aggrieved by the judgment and award of the Tribunal, the respondent in the O.P. filed the present appeal.

9 The contention of the learned counsel for the respondent is that Motor Accidents Claims Tribunal lacks inherent jurisdiction to entertain the petitions of this nature. He further submitted that the O.P is not maintainable under law as the accident occurred due to the rash and negligent driving of the motorcycle by the deceased himself.

10 Per contra, the learned counsel for the petitioners submitted that the Tribunal rightly awarded compensation of Rs.1.00 lakh in view of the recitals of Ex.B.1 policy. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

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

“Whether the Tribunal committed error while allowing the petition?”

POINT:

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12 A perusal of the record reveals that the present petition is filed under Section 163-A of the Motor Vehicles Act. The claimants need not prove rash and negligent act on the part of

the driver of the crime vehicle if the petition is filed under Section 163-A of the M.V. Act. However, filing of petition under Section 163-A of the M.V. Act does not preclude or prevent the insurance company to prove the negligence on the part of the driver of the crime vehicle. In the instant case, the deceased himself drove the motorcycle in a rash and negligent manner and dashed another motorcycle coming in opposite direction. A perusal of Ex.A.1 clearly reveals that the Station House Officer Podili Police Station registered a case in Cr.No.66 of 2009 against the deceased under Section 304-A of IPC. A perusal of the record reveals that no further investigation was conducted in the said crime in view of the death of the deceased. Basing on the material available on record, the Court can safely arrive at a conclusion that the accident occurred due to the rash and negligent driving of the motorcycle by the deceased.

13 The deceased has taken personal accident cover under the same policy by paying extra premium. The Tribunals were constituted under the M.V. Act to adjudicate the claims of the third parties. After the death of the deceased, the petitioners stepped into the shoes of the deceased. The insurance company has to indemnify the liability of the owner of the vehicle. Without establishing the liability on the part of the owner of the vehicle or unless the liability of the insured is determined, question of indemnifying the liability by the insurer does not arise. In the instant case, the accident occurred due to the negligence of the deceased himself. In such circumstances, question of indemnifying the liability of the owner of the vehicle does not arise.

14 At this juncture, the learned counsel for the petitioner has drawn my attention to the ratio laid down in ***Oriental Insurance Co. Ltd. Vs. Ranji Devi***^[1] wherein the Hon'ble apex Court held as under:

"10. In National Insurance Co. Ltd. v. Laxmi Narain Dhut {2007 (4) SCALE 36} it has been held:

Where the claim relates to own damage claims, it cannot be adjudicated by the insurance company. But it has to be decided by another forum i.e. forum created under the Consumer Protection Act, 1985 (in short 'the CP Act'). Before the Tribunal, there were essentially three parties i.e. the insurer, insured and the claimants. On the contrary, before the Consumer Forums there were two parties i.e. owner of the vehicle and the insurer. The claimant does not come into the picture. Therefore, these are cases where there is no third party involved."

The said principle has been reiterated recently in Premkumari v. Prahlad Dev {2008 (1) SCALE 531} and Oriental Insurance Co. Ltd. v. Prithvi Raj {2008 (1) SCALE 727}

11. The liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. The heirs of Janak Raj could not have maintained a claim in terms of Section 163-A of the Act. For the said purpose only the terms of the contract of insurance could be taken recourse to."

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15 The facts of the case on hand are identical to the facts of the case cited supra. 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 Tribunal committed error while allowing the petition by awarding compensation of Rs.1.00 lakh to the petitioners. Therefore, the award passed by the Tribunal is liable to be set aside.

16 For the foregoing discussion, the appeal is allowed, setting aside the award and judgment dated 30.08.2012 passed

by the Tribunal. Consequently, M.V.O.P.No.176 of 2010 stands dismissed. However, dismissal of the O.P. does not preclude the petitioners to approach the appropriate forum for redressal.

17 As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 25th August, 2015
Kvsn

[\[1\]](#) (2008) 5 SCC 736