THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
M.A.C.M.A. No.98 OF 2013

JUDGMENT:

1 This appeal, under Section 173 of M.V. Act, is filed assailing the judgment and award dated 30.12.2012 passed in M.V.O.P.No.337 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, East Godavari District at Rajahmundry.

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 08.02.2009 Mutyala Veera Venkata Satyanarayana along with his friend was proceeding to his village from Annavaram on a motorcycle. When they reached Gopalpatnam, the driver of the auto bearing No.AP 5 TU 1520 had driven the same in a rash and negligent manner and dashed against the motorcycle on which Satyanarayana and his friend were travelling from behind. Due to the accident, Satyanarayana sustained grievous injuries on various parts of the body. Immediately after the accident, Satyanarayana was shifted to Government Hospital, Kakinada where he succumbed to injuries on 13.02.2009 while undergoing treatment. The accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 5 TU 1520 against whom the Station House Officer Thondangi Police Station registered a

case in Cr.No.14 of 2099 for the offence punishable under Section 304-A of IPC. By the date of accident, the deceased was aged about 35 years and was earning Rs.4,500/- p.m. as milk vendor. The petitioners are parents of the deceased. The auto bearing No.AP 5 TU 1520, which was driven by the first respondent, belongs to the second respondent and was insured with the third respondent as on the date of accident and hence the respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.4.00 lakhs to the petitioners.

5 Respondent Nos.1 and 2 filed counter denying the material allegations made in the petition including the manner of accident, age and income of the deceased. The auto in question was insured with the third respondent as on the date of accident. Therefore, the third respondent alone is liable to pay compensation, if any, to the petitioners. Hence the petition may be dismissed against the respondent Nos.1 and 2.

6 Third respondent filed written statement denying the material allegations made in the petition including the manner of accident, age and income of the deceased. The petitioners have lodged a false complaint against the first respondent for unlawful gain. First Information Report was registered four days after the accident. The driver of the Auto was not having valid and effective driving licence as on the date of accident. Therefore, there is no obligation on the part of this respondent to indemnify the liability of the respondent No.2. The amount of compensation claimed by

the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed.

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

i. Whether the accident was occurred due to rash and negligent driving of R.1 driver of auto bearing registration No.AP 5 TU 1520?.

ii. Whether the petitioners are entitled for claim of compensation? If so, to what amount and against which of the respondents?

iii. To what relief?

8 During the course of trial, on behalf of the petitioners P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the respondents R.Ws.1 to 4 were examined and Exs.B.1 to B.6 and Exs.X.1 to X.4 were marked.

9 Having appreciated the 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 auto bearing No.AP 5 TU 1520 which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.2,48,000/- with interest at 6% p.a. from the date of petition till the date of realisation, directing the second respondent to pay compensation to the petitioners. Petition against respondent Nos.1 and 3 was dismissed. Being dissatisfied with the said amount of compensation, the claimants filed the present appeal.

10 The learned counsel for the petitioners submitted that the Tribunal has not rightly considered the monthly income

of the deceased. He further submitted that the Tribunal committed error while taking the age of the mother of the deceased to determine the multiplier. He further submitted that the Tribunal awarded compensation on assumptions and presumptions. None appeared for the second respondent.

11 On the other hand, the learned standing counsel for the third respondent submitted that the Tribunal awarded just and reasonable compensation. He further submitted that the Tribunal has rightly exonerated the third respondent from its liability as the driver of the auto was not having valid driving licence to drive the transport auto i.e. passengers auto.

12 Now the point that falls for consideration in this appeal is:

> "Whether the Tribunal has awarded just and reasonable compensation or not?"

<u>Point</u>:

13 As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 5 TU 1520. The respondents did not file appeal challenging the finding of the Tribunal on issue No.1. The finding of the Tribunal became final on issue No.1 so far as the respondent Nos.1 to 3 are concerned. Basing on the oral testimony of P.W.2, Exs.A.1 to A.5, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 5 TU 1520, which resulted in the death of the deceased. The Tribunal has assigned cogent and valid reasons to its findings. There are no grounds

much less valid grounds to interfere with the well considered findings of the Tribunal on issue No.1. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to contributory negligence on the part of the driver of the auto bearing No.AP 5 TU 1520 i.e. first respondent.

14 As per the recitals of Ex.A.3, the deceased was aged about 35 years by the date of accident. The Tribunal has taken the age of the mother of the deceased and fixed the multiplier as 13. In view of the principle enunciated in ***Munna Lal Jain v Vipin Kumar Sharma***[1]*,* where the deceased is unmarried, the Tribunal or the Court has to take into consideration the age of the deceased but not the age of the parents to adopt the multiplier. Therefore, the Tribunal has not applied the correct multiplier. As per the ratio laid down in ***Sarla Verma Vs. Delhi Transport Corporation***[2], the appropriate multiplier for the age group of 31 to 35 is 16.

15 As per the testimony of P.W.1, the deceased used to earn Rs.4,500/- p.m. as milk vendor. Except the self serving testimony of P.W.1, there is no other documentary evidence to prove that by the time of accident the deceased used to earn Rs.4,500/- p.m. as milk vendor. It is not uncommon to exaggerate the income of the deceased in order to claim more compensation. If really the deceased used to earn Rs.4,500/- p.m. as milk vendor what prevented the petitioners to examine the concerned person to prove the

income of the deceased? The learned counsel for the petitioners submitted that as per the ratio laid down in Munna Lal Jain case (1 supra), where the deceased is a self employee and below 40 years of age, there must be addition of 50% to actual income of deceased while computing future prospects. In the instant case, absolutely there is no material on record to establish that the deceased used to earn Rs.4,500/- p.m. out of self employment. Therefore, the decision cited above is not applicable to the facts of the case on hand. In the absence of documentary evidence some guess work is inevitable to determine the income of the deceased. Even by attending cooli work in villages, the deceased may earn Rs.100/- per day. Basing on the material available on record, the Tribunal has rightly taken the income of the deceased as Rs.3,000/- p.m. The deceased may contribute Rs.1,500/- p.m. to the petitioners. Therefore, the loss of dependency would come to Rs.1,500/- X 12 X 16 = Rs.2,88,000/-.

16 The Tribunal awarded meagre amount towards funeral expenses, loss of estate and transportation charges. In view of the ratio laid down in ***Ramilaben Chinubhai Parmar and Others Vs. National Insurance Co. & Others***[3], the claimants are entitled to Rs.50,000/- under the head 'Conventional Amount' instead of amounts under different heads as awarded by the Tribunal. Thus, the total amount of compensation to which the petitioners are entitled is Rs.3,38,000/-.

17 The petitioners are also entitled to interest at 7.5%

p.a. from the date of filing of the petition till the date of deposit on the enhanced amount of compensation.

18 The predominant contention of the learned counsel for the third respondent is that the second respondent has violated the terms and conditions of the insurance policy by entrusting the auto to the first respondent who was not having valid and effective driving licence as on the date of accident.

19 The oral testimony of R.Ws.1 to 4 coupled with Ex.B.6 and Exs.X.1 to X.3 clearly reveals that the first respondent had obtained driving licence to drive LMV Non-Transport with effect from 25.09.2008 to 24.09.2028. Admittedly, the vehicle in question, which is an auto, is a light motor vehicle. The fact remains that as on the date of accident, the first respondent had not obtained badge to drive LMV Non-Transport. Whether non-holding of badge by itself would amount fundamental breach of the terms and conditions of the policy so as to absolve the liability of the insurer?

20 It is a known fact that the driving skill required for LMV Transport and LMV Non-transport is one and the same. It is not the case of the third respondent that the proximate cause of the accident is non-holding of badge by the first respondent. In order to resolve the issue, this Court is placing reliance on ***S.Iyyapan Vs. United India Insurance Co.*** [4] wherein the Hon’ble apex Court held as follows:

> 18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no

> dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

21 Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am unable to accede to the contention of the learned counsel for the third respondent that the second respondent had violated the terms and conditions of the policy. The Tribunal committed error while exonerating the third respondent from its liability. Absolutely, there is no material on record to establish that the second respondent had violated the terms and conditions of the policy. Therefore, the third respondent has to indemnify the liability of the second respondent. Therefore, the respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioners.

22 In the result, the appeal is allowed in part enhancing the compensation from Rs.2,48,000/- to Rs.3,38,000/- with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit on the enhanced amount of compensation, directing the respondent Nos.1 to 3 to pay the compensation to the petitioners jointly and severally. Consequently, miscellaneous petitions, if any, pending in this miscellaneous appeal shall stand closed. No order as to costs.

T. SUNIL CHOWDARY, J

Date: 17th August, 2015
Kvsn

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[1] (2015) 6 SCC 347

[2] (2009) 6 SCC 121

[3] (2014 ACJ 1430)

[4] (2013) 7 SCC 62