THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.152 OF 2013

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and award dated 23.11.2012 passed in M.V.O.P.No.135 of 2010 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-IX Additional District Judge (Fast Track Court), Chittoor, wherein and whereby the Tribunal allowed the claim petition in part by awarding compensation of Rs.1,44,950/- to the petitioner as against the claim of Rs.3,00,000/-.

2. The parties to this appeal 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 appeal are briefly as follows: On 24.9.2009, at about 9.00 a.m., the petitioner was proceeding on his TVS-XL Moped bearing No.AP 03/P 9208 from his village-Murukambatta towards Tirupati. When he reached near Balaji Petrol Bunk on Chittoor–Tirupati Road, the driver of Tractor bearing No.AP 03/AD 2909 came in opposite direction in a rash and negligent manner and dashed against the TVS Moped. The accident occurred due to the rash and negligent driving of the driver of Tractor against whom the Station House Officer, Chittoor Taluk Police Station registered a case in Crime No.90 of 2009 under Section 338 IPC. Due to the accident, the petitioner sustained injuries on various parts of the body and took treatment as inpatient in CMC Hospital, Vellore from 24.9.2009 to 10.10.2009 and spent huge amount towards medicines and treatment. By the time of the accident, the petitioner was aged about 45 years and used to earn Rs.10,000/- per month by doing business. Due to the injuries, the petitioner could not run the business for a long time and thereby lost his income. The Tractor bearing No.AP 03/AD 2909 belongs to the first respondent was insured with the second

respondent with effect from 28.4.2009 to 27.4.2010. Hence, the petition claiming a compensation of Rs.3,00,000/- from the respondent Nos.1 and 2 jointly and severally with interest and costs.

4. The first respondent remained *ex parte*. The second respondent filed 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 TVS Moped by the petitioner. There was no negligence on the part of the driver of the Tractor. The driver of the Tractor 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 first respondent. Hence the petition may be dismissed.

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

> 1. Whether the accident was caused due to the rash and negligent driving of the driver of the Tractor bearing No.AP 03/AD 2909 or the petitioner himself while riding on TVS XL Moped bearing Reg. No.AP 03/P 9208?
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> 2. Whether the petitioner is entitled for any compensation? If so, to what amount and from whom?

6. During the course of trial, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A1 to A17 were marked. On behalf of the respondents, no oral evidence was adduced, but Ex.B1 was marked on behalf of the second respondent.

7. Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle, which resulted in injuries to the petitioner and allowed the petition in part by awarding a compensation of Rs.1,44,950/- with interest at 7.5% per annum from the date of the petition till the date of deposit. Being

not satisfied by the quantum of compensation awarded by the Tribunal, the petitioner–claimant preferred the present appeal.

8. The learned counsel for the petitioner submitted that the Tribunal has not awarded just and reasonable compensation. He further submitted that the Tribunal committed error by deducting 1/3rd of the amount towards personal expenses of the petitioner, which is not permissible in injury cases. He also submitted that since Ex.B1 policy was in force as on the date of the accident, the Tribunal ought not to have exonerated the second respondent from its liability. ***Per contra***, learned counsel for the second respondent submitted that the Tribunal has awarded just and reasonable compensation. He further submitted that the Tribunal rightly exonerated the liability of the second respondent as Ex.B1 policy was not transferred in the name of the first respondent.

9. Now, the points that arise for consideration in this appeal are:

(1) Whether the Tribunal has awarded just and reasonable compensation?

(2) Whether the Tribunal committed error by exonerating the liability on the part of the second respondent?

Point No.1:

10. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of Tractor bearing No.AP 03/AD 2909, which resulted in injuries to the petitioner, became final, in view of non-preferring of appeal or non-filing of cross-objections by the respondents. Hence, there is no need to discuss this issue again in this appeal.

11. The Tribunal, by taking into consideration the nature of the injuries sustained by the petitioner, rightly assessed the loss of future earnings of the petitioner at Rs.1,00,800/-. However, the Tribunal, after

deducting 1/3rd of it towards personal expenses of the petitioner, awarded [Rs.1,00,800 – (1/3rd) Rs.33,600=] Rs.67,200/- only towards loss of future earnings. It is needless to say that the Tribunal or court has to deduct 1/3rd of the monthly income towards personal expenses of the deceased. In respect of injury cases, deduction of 1/3rd shall not be made. As rightly contended by the learned counsel for the petitioner, the Tribunal has committed error in deducting 1/3rd of the amount towards personal expenses of the petitioner. Therefore, the petitioner is entitled to Rs.1,00,800/- towards loss of future earnings. There is no dispute with regard to the amounts awarded under the other heads; therefore, there is no need to determine the justifiability or reasonableness of the same. The petitioner is entitled to the compensation under the following heads:

1.	Loss of future earnings	:	1,00,800
2.	Pain and suffering	:	10,000
3.	Loss of amenities in life	:	10,000
4.	Discomfort and inconvenience	:	10,000
5	Clothing & attendant charges	:	4,000
6.	Special diet & feeding expenses	:	5,000
7.	Transport expenses	:	2,000
8.	Loss of earning during treatment	:	1,700
9.	Medical expenses	:	35,057
	Total	:	1,78,557

The compensation awarded to the petitioner, as above, is just and reasonable. Accordingly, this point is answered holding that the Tribunal committed error while deducting 1/3rd of the amount towards personal expenses of the petitioner–injured.

Point No.2:

12. As per the recitals of Ex.B1 policy, the Tractor bearing No.AP 03/AD 2909 was insured with the second respondent-Insurance Company with effect from 28.4.2009 to 27.4.2010. Ex.B1 policy was in force as on the date of accident i.e., on 24.9.2009. Ex.B1 policy was

issued in the name of one S.Narasimhaiah but the petitioner filed the claim petition showing M.Chandra Sekhar (first respondent) as owner of the Tractor bearing No.AP 03/AD 2909. It appears that the first respondent had not taken any steps for transfer of insurance policy in his name. A perusal of Ex.A3–Form No.54 clearly reveals that the first respondent was the registered owner of the Tractor as on the date of the accident. By pointing out non-transfer of Ex.B1 policy in the name of the first respondent, learned counsel for the second respondent submitted that the Tribunal has rightly exonerated the liability of the second respondent. The material available on record clearly reveals that the first respondent was owner of the Tractor as on the date of the accident. Simply because Ex.B1 policy was not transferred in the name of the first respondent, by itself is not a valid ground to absolve the liability of the second respondent. So long as the policy was in force, the insurer has to indemnify the liability of the insured. As per the principle enunciated in **Rikhi Ram v Smt.Sukhrania**[1], *whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of insurer does not ceases so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act.*

13. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited above, I am of the considered view that the second respondent has to indemnify the liability of the first respondent in view of recitals of Ex.B1 policy. The finding of the Tribunal that the second respondent need not indemnify the liability of the first respondent is hereby set aside. The respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Accordingly, the point is answered.

14. In the result, the appeal is partly allowed, enhancing the compensation from Rs.1,44,950/- to Rs.1,78,557/-. The respondent Nos.1 and 2 shall jointly and severally pay the enhanced

compensation to the petitioner with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization. There shall be no order as to costs in this appeal. Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 27.08.2015.
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[1] (2003) 3 SCC 97 : AIR 2003 SC 1446