THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2043 of 2010

JUDGMENT:

Aggrieved by the Award dated 11.01.2010 in MVOP No.543 of 2008 passed by the Chairman, M.A.C.T-cum- Principal District Judge, Kadapa (for short "the Tribunal"), the 2nd respondent/Insurance Company preferred the instant appeal.

2 a) The factual matrix of the case is thus:

On 15.10.2007 the deceased along with Dwara Venkata Sivudu and two others was returning by walk to their village Madavapuram from G. Uppalapadu and when they reached near Pedda Thota Mori near G. Uppalapadu at about 12.30 pm, an auto bearing No. AP 04 TV 5072 being driven by its driver in a rash and negligent manner at high speed dashed against the deceased from behind. In the resultant accident, the deceased received severe injuries. Thereafter, he was shifted to Government General Hospital, Kurnool and later he died while undergoing treatment. It is averred that auto driver was responsible for the accident and due to the sudden demise of deceased, the claimants became destitutes. On these averments, the claimants, who are wife and children of the deceased, filed MVO.P.No.543 of 2008 under Section 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 auto and claimed Rs.2,50,000/- as compensation under different heads mentioned in OP.

b) Respondent No.1/Owner of the Auto filed counter and denied the petition averments and urged to put the claimants in strict proof of the same. He further stated that the auto was insured with R2—Insurance Company and it has to indemnify the liability of R1, if any. He further contended that claim is highly excessive and exorbitant and thus prayed for dismissal of OP.

c) Respondent No.2/Insurance Company denied all material averments and urged to put the claimants in strict proof of the same. It contended that driver of the auto had no valid and effecting driving license at the time of accident and hence, it is not liable to pay compensation. It further contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial, Pw.1 examined and Exs.A1 to A4 and Exs. X.1 and X.2 were marked on behalf of the claimants. On behalf of respondents, RW.1 was examined and Ex.B.1 was marked.

e) The Tribunal, on appreciation of oral and documentary evidence though arrived at Rs.2,80,000/- as follows, but restricted the compensation to Rs. 2,50,000/- with costs and interest at 6% p.a.

Loss of dependency and future

Expectancy of life Rs.2,64,000-00

Loss of estate Rs. 10,000-00

Funeral expenses Rs. 2,000-00

Loss of consortium Rs. 4,000-00

Total Rs.2,80,000-00

Hence, the appeal by the Insurance Company.

3) Heard arguments of Sri S. Raja Kumar, learned counsel for appellant/Insurance Company and Sri J. Seshagiri Rao, learned counsel for respondent/Claimant No.1. Notice sent to R6 was not yet returned. Notice on R.3 was served, but there is no representation on his behalf and hence treated as heard.

4) The parties in this appeal are referred to as they stood before the

Tribunal.

5a) The main contention of the learned counsel for appellant is that the driver of the offending auto had no valid and effecting driving license by the time of accident and the first respondent, who is the owner of the vehicle, had knowingly allowed unlicensed driver to drive the vehicle and thus committed breach of the terms of the policy and therefore, the Insurance Company is not liable to pay compensation but the Tribunal erroneously fastened liability on the insurance company. He, thus, prayed to allow the appeal.

b) Per contra, learned counsel for respondents/claimants argued that as per the evidence of Rw.1 and Ex.X.2—Driving License, the driving license of the driver of the offending auto was valid and effective till 5.04.2007 and thereafter it was expired because of non renewal of the license and considering this aspect, the lower Tribunal directed the insurance company to pay and recover the compensation from the insured following the decision of Hon'ble Apex Court in ***Oriental Insurance Company Limited v. Angad Kol and others*** and as such, there is no irregularity or illegality. He, thus, prayed to dismiss the appeal.

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

"Whether the Award of the Tribunal in fastening liability on Insurance Company is factually and legally sustainable?"

7) **POINT:** Accident, involvement of Auto bearing No. AP 04 TV 5072 and the death of deceased are not in dispute. The bone of contention is with regard to fastening liability on insurance company. As stated supra, the Insurance Company challenges its liability on the main plea of breach of the terms of the policy on the ground that the driver had no valid and effective driving license by the date of accident. In this context, a perusal of the evidence of RW.1 and Ex.X.2—Driving License of the driver of the crime auto, show that he was holding valid and effective license to drive both non-transport and transport vehicles till 5.04.2007. Thereafter, his driving license was not renewed. In these circumstances, the lower Tribunal having followed the decision of the Apex Court in ***Oriental Insurance Company Limited*** (1 supra) held that the insurance company shall pay compensation and then recover from the owner/insured. I have gone through the judgment. In similar circumstances in respect of the death of a 3rd party caused by goods vehicle and when the driver had no valid and effective driving license, the Apex Court directed the Insurance Company to pay and recover the compensation from the owner/insured. In the instant case also, the death is of a 3rd party and Ex.B.1—Policy was in force by the date of accident and the driver had driving license till some time prior to accident i.e., 5.04.2007. In these circumstances, the Tribunal's direction to the Insurance company to pay and recover the compensation from the owner/insured cannot be found fault at either factually or legally. Hence, I find no merits in this appeal.

8) In the result, this MACMA filed by the Appellant/Insurance Company is dismissed with the direction that:

i. the respondents in the OP shall deposit the compensation amount within two months from the date of this judgment, failing which, execution can be taken out against them.

ii. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 26.10.2015

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THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2043 of 2010

Dt. 26.10.2015

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