THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.493 OF 2009

JUDGMENT:

This appeal is preferred by the appellants/petitioners challenging the judgment and award, dated 23.04.2001 passed in O.P.No.201 of 1998 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

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

On 01.09.1997, petitioner No.2 and her son by name Erabelli Sunil Rao and some others boarded an Auto bearing No.AP-15-U-1926 at Huzurabad to go to Suraram Village and when the auto reached outskirts of Valbhapur Village, the driver of the Jeep bearing No.TNO-7-T-0063 had driven the same in a rash and negligent manner and dashed the auto and thereafter a cyclist. Due to the accident, Sunil Rao (hereinafter referred to as, the deceased) sustained injuries and died in M.G.M. Hospital, Warangal while undergoing treatment. The Station House Officer, Elkathurthy Police Station registered a case in Crime No.102 of 1997 for the offences punishable under Sections 304-A and 337 I.P.C., against the driver of the jeep. By the time of accident, the deceased was a minor aged about 9 years. The petitioners are the father and mother of the deceased. Therefore, the petitioners filed the petition claiming compensation of Rs.1,00,000/- from the respondents.

4. Respondent Nos.1 and 2 remained *ex-parte.* Respondent No.3 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 driver of the auto. The proposal form submitted by respondent No.2 shows that the crime vehicle was not insured with this respondent. It is further submitted that one Gudeti Raju got insured his vehicle bearing No.TN/27/0063. As per the recitals of the F.I.R., charge sheet and Form No.54, the jeep bearing No.TNO-7-T-0063 was involved in the accident, but not TN/27/0063. Hence, this respondent is not liable to indemnify the liability of respondent No.2. Hence, the petition may be dismissed.

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

(1) Whether the accident occurred due to rash and negligent driving of 1st respondent in driving the vehicle bearing No.TNO-7-T-0063?

(2) Whether the vehicle involved in the accident was covered by valid insurance by the date of accident?

(3) Whether the petitioners are entitled to get compensation?

(4) To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.3 were marked. On behalf of the contesting respondent, RW.1 was examined and Exs.B.1 to B.6 were marked.

7. Basing on the oral, documentary evidence and other material 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 jeep which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.60,000/- with interest at the rate of 9% per annum from the date of petition till the date of realisation and dismissed the petition against respondent

No.3.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners preferred the present appeal.

9. Heard Sri K.Jagadishwar Reddy, the learned counsel for the appellants/petitioners and Sri A.V.K.S.Prasad, the learned Standing Counsel for respondent No.3 – Oriental Insurance Company Limited.

10. Learned counsel for the petitioners submitted that the Tribunal failed to consider the crime vehicle which belongs to the second respondent was insured with the third respondent. He further submitted that the chasis number and engine number mentioned in Ex.B1 cover note and Ex.B.2 Policy are one and the same, this itself clearly indicates that the crime vehicle was insured with the third respondent.

11. Per contra, the learned Standing Counsel for respondent No.3 submitted that the jeep involved in the accident was not insured with respondent No.3 at the relevant point of time.

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

> Whether the jeep was insured with respondent No.3 – Insurance Company under Ex.B.2 – Insurance Policy as on the date of accident or not?

Point:

13. As per the finding recorded by the Tribunal, Ex.B.2 was issued in the name of respondent No.2. There is a discrepancy with regard to the vehicle number. In Ex.B.1 – Certified Copy of proposal form, the vehicle number was mentioned as TN-27-0063 (Taxi Cab). In Ex.B.2 – Certified Copy of Insurance Policy, the vehicle number was mentioned as TN270063. In Ex.B.3 – Certified Copy of Motor

Vehicles Inspector's Report, the vehicle number was mentioned as TNO 7/63 T/lab. In Ex.B.4 – Certified Copy of charge sheet, the vehicle number was mentioned as TNO/7/T-0063. In Ex.B.5 – Certified Copy of Form No.54, the vehicle number was mentioned as TNO/7/T-0063. Because of the discrepancy of vehicle number in the above referred documents, the Tribunal dismissed the petition against respondent No.3. The fact remains that respondent No.3 – Insurance Company issued Ex.B.2 – Insurance Policy in the name of respondent No.2. It is not the case of respondent No.3 that respondent No.2 insured two vehicles with respondent No.3 – Insurance Company.

14. At the time of arguments, the learned counsel for the petitioners has drawn my attention to the judgment passed in C.M.A.No.2640 of 2001. A perusal of the same reveals that out of the same accident, some of the claimants filed M.V.O.P.No.85 of 1998 on the file of the Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge at Karimnagar and the same was allowed by the Tribunal on 31.01.2001 fastening the liability on respondent No.3 also. Feeling aggrieved by the judgment and award, dated 31.01.2001, the Insurance Company preferred the appeal. This Court dismissed the appeal on 30.03.2005. It is not out of place to extract the relevant portion of the judgment in C.M.A.No.2640 of 2001, which is as follows:

> "With reference to the above said submissions, in this case it is to be seen that the Tribunal had recorded a categorical finding that the only vehicle of the second respondent is insured with the third respondent and the chasis number and engine number which is noted in Exs.B.1 and B.2 is 18160. Inasmuch as it is admitted in the evidence of the RW.2 that the vehicle was not inspected before issuing the policy, the Tribunal below held that the insurance company might have noted the vehicle number wrongly. All the documents contain the name of the second respondent as the owner of the vehicle and the chasis number also tallied with the

engine number. In that scenario, the Tribunal below was right in recording such a finding by appreciating the evidence available on record."

15. Admittedly in O.P.No.201 of 1998, the Tribunal has not mentioned chasis number and the engine number of the jeep. The fact remains that O.P.Nos.201 of 1998 and 85 of 1998 arose out of the same accident.

16. I have carefully perused Ex.B.1 – cover note as well as Ex.B.2 – Insurance Policy. In Ex.B.1 – cover note and Ex.B.2 – Insurance Policy, the engine number and chasis number was mentioned as 18160. If the Tribunal had taken a little care while verifying Exs.B.1 and B.2, the finding of it would be otherwise. A perusal of the record clearly reveals that the jeep (crime vehicle) was insured with respondent No.3 – Insurance Company as on the date of accident. Absolutely there is no material on record to prove that respondent No.2 had violated the terms and conditions of the Policy.

17. Having regard to the facts and circumstances of the case and also the judgment of this Court in C.M.A.No.2640 of 2001, I am of the considered view that respondent No.3 has to indemnify the liability of respondent No.2.

18. In the result, the Appeal is allowed setting aside the judgment and award of the Tribunal to the extent of dismissing the petition against the respondent No.3. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.60,000/- to the petitioners with interest at the rate of 9% per annum from the date of petition till the date of realisation. There shall be no order as to costs.

19. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 23.03.2015

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