THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
MACMA No.910 of 2009

JUDGMENT:

1 Assailing the judgment and award dated 27.10.2005 passed in MVOP No.115 of 2000 on the file of Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Anantapur, wherein and whereby the Tribunal awarded an amount of Rs.5.00 lakhs as compensation by exonerating the insurance company from its liability and by fastening the liability only on the owner of the offending vehicle, the claimants have preferred this appeal.

2 For the sake of convenience, the parties to this appeal will hereinafter be referred as they were arrayed in the O.P.

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

4 On 28.08.1999 at about 2.00 PM one K. Veluswamy (hereinafter referred to as 'the deceased') while driving the tractor and trailer bearing No.ATA 3605 and 3606 fell in a canal. The dead body of the deceased was found at the tail end of the channel near KM No.11 leading to Korrakolla PABR Dam on 30.08.1999. The brother of the deceased lodged a complaint to the Station House Officer, Uravakonda police station who in turn registered a case in Cr.No.110 of 1999 under Section 304-A of IPC. The deceased had taken the crime vehicle on hire basis from the first respondent, who is the owner of the said vehicle. By the date of accident, the deceased was aged about 34 years and used to earn Rs.2.00 lakhs p.a. as a contractor. First petitioner is the wife, second petitioner is the mother and petitioner Nos.3 and 4 are the unmarried sisters of the deceased as well as they are dependents on the income of the deceased. First respondent is none other than the father of the deceased. The crime vehicle which belongs to the first respondent

was insured with the second respondent as on the date of accident. Hence the petitioners filed the petition claiming compensation of Rs.5.00 lakhs from the respondent jointly and severally for the death of the deceased in the accident.

5 First respondent remained ex parte. Second respondent filed counter denying all the averments made in the petition, inter *alia* contending that the deceased being the legal representative of the insured is a party to the contract. In case of any eventuality which resulted the death of the deceased, then automatically the family members of the deceased including the deceased will get all the rights / liabilities. The deceased will not fall within the definition of third party so as to claim compensation. The first respondent had violated the terms and conditions of the policy by entrusting the vehicle to the deceased who was not having valid and effective driving licence as on the date of accident. The petition is not maintainable as the claimants are none other than the blood relatives of the driver of the vehicle at whose fault the accident had occurred. The amount of compensation claimed under various heads is highly excessive and exorbitant. Hence the petition may be dismissed.

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

i. Whether the accident occurred on 28.8.1999 due to rash and negligent driving of the Tractor bearing No.ATA 3605 by its driver, the tractor fell into the canal and caused the death of the deceased?

ii. Whether the driver of the crime vehicle is having a valid driving licence by the date of accident?

iii. Whether the crime vehicle was having valid permit on the dated of accident?

iv. Whether the vehicle was insured by the date of accident?

v. Whether the petitioner proved the age, income and occupation of the deceased?

vi. Whether the petitions are entitled to compensation? If so, to what amount and form which of the respondent?

vii. To what relief?

7 The Tribunal also framed an additional issue as under:

"Whether the deceased could not be termed as Third Party"

8 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 respondents, R.W.1 was examined and Exs.B.1 to B.4 were marked.

9 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the crime vehicle by the deceased and allowed the petition by awarding compensation of Rs.5.00 lakhs with interest at 9% p.a from the date of filing of the petition till the date of realization and directed the respondent No.1 to deposit the same. However, the petition against the 2nd respondent was dismissed. As stated supra, feeling aggrieved by the said finding of the Tribunal fastening the liability only on the first respondent, the claimants filed this appeal.

10 Sri Suresh Reddy, the learned counsel for the petitioners submitted that the Tribunal dismissed the petition against the second respondent even though the policy was in force as on the date of accident. He further submitted that the Tribunal failed to consider that the deceased took the crime vehicle on hire basis from the firt respondent, therefore, the insurance company has to indemnify the liability of the first respondent.

11 *Per* contra, Sri A.V.K.Prasad, the learned counsel for the 2nd respondent – insurance company submitted that the first respondent had entrusted the crime vehicle to the deceased knowing fully well

that he was not having valid and effective driving licence as on the date of accident and thereby violated the terms and conditions of the policy. He further submitted that the accident occurred due to the negligence on the part of the deceased himself and hence the petitioners are not entitled to claim compensation from the second respondent.

12 In view of the rival contentions, the following points emerge for consideration in this appeal:

> 1. Whether the first respondent violated the terms and conditions of Ex.B.1 policy to absolve the liability of the second respondent?
>
> 2. Whether the petitioners are entitled to compensation under the M.V. Act?

13 Since both the points are interdependent on each other, I am inclined to address these two points simultaneously in order to avoid repetition.

Points 1 & 2:

14 The following admitted facts can be culled out from the oral and documentary evidence available on record. First petitioner is the wife, second petitioner is the mother, petitioner Nos.3 and 4 are the unmarried sisters and the first respondent is the father of the deceased. The crime vehicle which belongs to the first respondent was insured with the second respondent – insurance company under Ex.B.1 policy as on the date of accident. The Tribunal awarded an amount of Rs.5.00 lakhs as compensation to the petitioners fastening the liability on the first respondent alone.

15 The crucial question that falls for consideration at this juncture is whether the deceased has taken the crime vehicle on hire basis from the first respondent or not?

16 In view of the inter *se* relationship between the petitioners and the first respondent and in view of the peculiar the facts and circumstances of the case, the possibility of taking a stand which suits to the claim of petitioners cannot be ruled out completely. The author of Ex.A.1 - First Information Report is none other than the brother of the deceased and another son of the first respondent. It is not mentioned in Ex.A.1 that the deceased had taken the crime vehicle from the first respondent on hire basis. The petitioners filed the O.P. in the year 2000. In the given circumstances, in order to claim compensation from the insurance company, the possibility of setting up of the plea of taking the tractor on hire basis by the deceased from the first respondent cannot be ruled out. Except the self-serving testimony of P.W.1, who is an interested witness, there is no other evidence to establish that the deceased had taken the crime vehicle from the first respondent on hire basis. It is not out of place to extract hereunder the relevant portion in the First Information Report, which reads as under:

> "నా తమ్ముడు కే. వేలుస్వామి గత 20 సంవత్సరముల నుండి లాడేరు మండలం కొరకాల్ల డ్యమ్ నందు మాకు హక్కులు కలిగిన మా యొక్క ట్రాక్టర్ (ఫహనము) పని నిమితం డ్యాం నందు సొంతముగా పని చేసేవాడు. ట్రాక్టర్ పని చేసేవాడు."

17 A perusal of Ex.A.1 - First Information Report clearly demonstrates that the crime vehicle belongs to the joint family of the first respondent. The petitioners have not filed even a single scrap of paper to establish that the deceased and the first respondent have been residing separately by partitioning the joint family properties including the crime vehicle. Basing on the material available on record, the irresistible conclusion that can be drawn is that the family members of the first respondent have been carrying on the contract works jointly. Even assuming but not conceding that the deceased had taken the crime vehicle from the first respondent on hire basis, but, that itself will not create any statutory right in favour of the

petitioners to claim compensation from the second respondent – insurance company automatically. The deceased himself was responsible for the unfortunate accident. It is needless to say that the legal representatives of the deceased are not entitled to claim compensation if the accident occurred due to the negligence of the deceased himself. Suffice it to say that no one is entitled to take advantage of the unfortunate death of the deceased which happened due to the negligence of the deceased himself. The very object of the Motor Vehicles Act is to provide financial assistance to the victims of a road accident and the legal representatives of the deceased. But that does not mean that the insurance company has to indemnify the liability of the insured in each and every case notwithstanding the violation of the terms and conditions of the policy. The various provisions of the M.V. Act create a statutory right in favour of the claimants to claim compensation from the insurer. Third party means a person who has no relation whatsoever with the insurer or the insured. In other words, a third party means one who is not a party to the insurance policy.

18 Ex.B.1 insurance policy stands in the name of the first respondent who is none other than the father of the deceased. Ex.B.1 does not cover the risk of the family members of the insured. By any stretch of imagination, it can be presumed that the deceased will fall within the definition of third party, which enjoins or enables the claimants to file petition under Section 166 of M.V. Act to claim compensation from the insurer as a statutory right.

19 As observed earlier, in Ex.A.1 – First Information Report it is categorically mentioned that the crime vehicle belongs to the joint family of the first respondent. This fact by itself excludes the deceased from the definition of 'third party'.

20 It is needless to say that the insured is not supposed to entrust the vehicle to a person who is not having a valid and effective driving licence or no licence at all. If the insurer establishes that the insured entrusted the vehicle to the person knowing fully well that he was not having a valid and effective driving licence or no licence, then the question of indemnifying the liability of the insured by the insurer does not arise. A perusal of Ex.A.3 reveals tat the deceased had obtained the licence to drive light motor vehicle with effect from 27.07.1994 to 26.07.1997. The accident occurred on 28.08.1999, which clearly indicates that the driving licence of the deceased expired almost two years prior to the date of accident. If really the driving licence of the deceased was renewed on or before 26.07.1997, certainly the petitioners would have produced the same before the Tribunal. If there was no blood relationship between the deceased and the first respondent, at least there may be some justification to take the plea that the first respondent entrusted the vehicle to the deceased without knowing the factum of not having of driving licence by the deceased. For the reasons best known to him, the first respondent did not choose to appear before the Tribunal. It appears that the first respondent did not appear before the Tribunal in order to mulct the liability on the insurance company in one way or the other. First respondent is the competent person to say whether he entrusted the crime vehicle to the deceased, who is none other than his son, without knowing the expiry of his driving licence. For the reasons best known to him the first respondent did not choose to appear before the Tribunal or to enter into the witness box. Such an inaction on the part of the first respondent creates any amount of doubt. The Tribunal or the Court can draw presumption basing on the facts pleaded and proved. The Tribunal framed an issue covering this aspect and had given a reasonable opportunity to the petitioners as well as the first respondent to substantiate their stand. Basing on

the material available on record, this Court can safely arrive at a conclusion that the deceased was not having valid and effective driving licence to drive the crime vehicle as on the date of accident. The first respondent entrusted the vehicle to the deceased knowing fully well that the deceased was not having driving licence to drive the crime vehicle on the date of accident and thereby violated the terms and conditions of Ex.B.1 policy. There is no contractual obligation on the part of the second respondent – insurance company to indemnify the liability of the first respondent who intentionally violated the terms and conditions of the policy. The Tribunal has considered all these aspects in right perspective and dismissed the petition as against the second respondent. There are no grounds much less valid grounds to upset the findings recorded by the Tribunal.

21 In the light of the foregoing discussion, I am of the considered view that the appeal lacks merits and bonafides and is liable to be dismissed.

22 In the result, the appeal is dismissed. No order as to costs. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 26th March, 2015.
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