THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.892 OF 2009

JUDGMENT:

This appeal is preferred by the appellant/respondent No.2 challenging the judgment and award, dated 21.11.2008 passed in M.V.O.P.No.212 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ongole (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 07.03.2006 at about 4:00 PM, one N.Suresh (hereinafter referred to as 'the deceased') boarded an auto bearing No.AP 27V 9903 at Uppugunduru to go to Ongole along with construction material. When the auto reached in between Kunchepalli and Unnaguravaipalem, the driver of the auto had driven the same in a rash and negligent manner due to which, the auto turned turtle. The accident occurred due to the rash and negligent driving of the driver of the auto against whom the Station House Officer, Podili Police Station registered a case in Crime No.35 of 2006 for the offences punishable under Sections 337 and 304-A I.P.C. Due to accident, the deceased sustained injuries and died on the way to Government Hospital, Darsi. By the time of accident, the deceased was a bachelor and aged about 21 years. The petitioners are dependants on the income of the deceased. The auto which belongs to respondent No.1 was insured with respondent No.2 – Insurance Company with effect from 28.11.2005 to 27.11.2006. Therefore, the respondents are jointly and severally liable to pay compensation of Rs.3,00,000/- to the petitioners. Hence, the petition.

4. Respondent No.1 filed written statement denying all the material averments made in the petition *inter alia* contending that there was no rashness or negligence on the part of the driver of the auto to cause the accident. It is further contended that the auto was validly insured with respondent No.2 – Insurance Company and the driver of the auto was having valid and effective driving licence to drive the auto at the time of accident. Respondent No.2 alone has to pay the compensation, if any, to the petitioners. Hence, the petition may be dismissed.

5. Respondent No.2 filed written statement denying all the averments made in the petition *inter alia* contending that by the time of accident, the deceased was travelling as an unauthorized passenger. Respondent No.1 violated the terms and conditions of the policy by allowing the deceased to travel in the auto, which is one meant for transportation of goods only. The driver of the auto was not having valid and effective driving licence as on the date of accident to drive the light motor vehicle transport. Therefore, this respondent is not liable to indemnify the liability of respondent No.1 in view of violation of the terms and conditions of the policy. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

(1) Whether the deceased died due to rash and negligent driving of the driver of the trally auto bearing No.AP 27 V 9903?

(2) What is the correct age & income of deceased as on date of the accident?

(3) Whether the petitioners are entitled for compensation, if so, to what extent and from whom?

(4) To what relief?

7. During the course of trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.6 were marked. On behalf of the respondents, RWs.1 and 2 were examined and Exs.B.1 to B.3 were marked.

8. 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 auto which resulted in the death of the deceased and allowed the petition by awarding compensation of Rs.3,00,000/- and directed respondent Nos.1 and 2 jointly and severally to pay the compensation to the petitioners with a liberty to respondent No.2 to recover the same from respondent No.1.

9. Feeling aggrieved by the judgment and award of the Tribunal, respondent No.2 – Insurance Company preferred the present appeal.

10. Heard Sri A.Ramakrishna Reddy, the learned counsel for respondent No.2 – Insurance Company (appellant) and Sri Sudhakara Rao Ambati, the learned counsel for the petitioners (respondent Nos.1 to 3).

11. The contention of the learned counsel for respondent No.2 is four fold: (1) The quantum of compensation awarded under various heads is excessive; (2) By the time of accident, the deceased was travelling as a gratuitous passenger and therefore, the Tribunal wrongly fastened the liability on respondent No.2 – Insurance Company; (3) The Tribunal failed to consider that the driver of the auto was not having valid and effective driving licence and therefore, the second respondent is not liable to pay compensation to the petitioners; and (4) The rate of interest awarded by the Tribunal is on higher side.

12. Per contra, the learned counsel for the petitioners submitted that

the Tribunal rightly considered various aspects and awarded just and reasonable compensation. He further submitted that the finding of the Tribunal that the driver of the auto was not having valid and effective driving licence is not sustainable either on facts or on law.

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

1. Whether the quantum of compensation awarded is just and reasonable or not?

2. Whether respondent No.1 had violated the terms and conditions of the policy so as to absolve the liability of respondent No.2?

3. Whether the rate of interest awarded by the Tribunal is on higher side or not?

Point No.1:

14. Learned counsel for respondent No.2 in all fairness submitted that the Insurance Company is not disputing the manner of the accident and *factum* of death of deceased. The Tribunal has assigned cogent and valid reasons to its findings on issue No.1 with regard to the manner of the accident. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. Hence, this Court is of the considered opinion that the accident occurred due to the rash and negligent driving of the driver of the auto which resulted in the death of the deceased. It is an admitted fact that the deceased was a bachelor. The mother of the deceased was aged about 38 years. Therefore, the Tribunal has taken the multiplier as '16'. As rightly contended by the learned counsel for respondent No.2, the Tribunal has not applied correct multiplier. As per the principle enunciated in **Sarla Verma v. Delhi Transport Corporation**[1], the multiplier to be taken for the age group of 36-40 is '15'. Hence, I am of the considered view that '15' is

the appropriate multiplier in this case. The Tribunal has taken the income of the deceased as Rs.3000/- per month. The deceased was a Mason by profession. Even in the villages, a mason may earn not less than Rs.3,000/- per month. Therefore, the Tribunal has rightly assessed the monthly income of the deceased as Rs.3,000/-. The Tribunal has deducted 1/3rd towards the personal expenses of the deceased. Learned counsel for respondent No.2 strenuously submitted that the Tribunal has to deduct 50% towards personal expenses of the deceased in view of the decision reported in **Sarla Verma**'s case (supra 1). The deceased may contribute Rs.1500/- per month to his family members. Per annum, it comes to Rs.18,000/-. The loss of dependency comes to Rs.2,70,000/- (18,000 X 15). The Tribunal awarded an amount of Rs.17,000/- towards loss of estate and funeral expenses. Taking into consideration the age of the deceased, I am inclined to award an amount of Rs.25,000/- towards loss of estate and funeral expenses. Thus, the amount of compensation to which the petitioners are entitled to under various heads is as follows:

01.	Loss of dependency	Rs.2,70,000/-
02.	Loss of estate and funeral expenses	Rs. 25,000/-
	Total:	Rs.2,95,000/-

The amount of compensation awarded under various heads is just and reasonable to meet the ends of justice.

POINT No.2:

15. As per the averments in the petition and the recitals of Exs.A.1 and A.4, by the time of accident, the deceased was travelling in the trolley along with construction material. The seating capacity of the auto-tralley is one. Learned counsel for respondent No.2 submitted that respondent No.1 had violated the terms and conditions of the

policy as the seating capacity of the auto is only one. He further submitted that the terms and conditions of the policy do not cover the risk of the deceased. In the cover note, it is clearly mentioned that it covers the risk of

1 + 1. It is not in dispute that by the time of accident, the deceased was travelling in the auto along with his construction material. It is a known fact that a Mason generally will carry the construction material to the place of construction. It seems that on the date of accident, the deceased engaged the auto for transportation of construction material. The deceased will fall within the definition of owner of the goods. Viewed from any angle, I am unable to accede to the contention of the learned counsel for respondent No.2 that by the time of accident, the deceased was travelling as gratuitous passenger in the auto. The cover note covers the risk of 1 + 1. Respondent No.2, having agreed to indemnify the liability of two persons, now cannot take u-turn and say that the policy does not cover the risk of the deceased. The Tribunal has considered all these aspects in right prospective and arrived at a conclusion that the cover note covers the risk of the deceased. I am fully agreeing with the findings recorded by the Tribunal. Therefore, I am unable to accede to the contention of the learned counsel for respondent No.2 that by the time of accident, the deceased was travelling in the trolley auto as unauthorised passenger or gratuitous passenger.

16. The predominant contention of the learned counsel for respondent No.2 is that the driver of the auto trolley was not having valid and effective driving licence as on the date of accident. It is not in dispute that the auto is a light motor vehicle. The oral testimony of RW.2 coupled with Ex.B.3 reveals that the driver of the trolley was having driving licence to drive the light motor vehicle non-transport with effect from 16.12.2005 to 18.07.2020. The fact remains that the driver of the auto was having driving licence to drive the light motor

vehicle non-transport. The crucial question that falls for consideration is whether the driving of the light motor vehicle transport by the person having licence to drive light motor vehicle non-transport would amount to fundamental breach of terms and conditions of the policy or not?

17. The driving skill required for driving of the light motor vehicle either transport or non-transport is one and the same. There is no whisper in the testimony of RW.2 that the driving skill required for driving of light motor vehicle transport and light motor vehicle non-transport is not one and the same. As rightly pointed out by the learned counsel for respondent No.2, Section 10 of the Motor Vehicles Act, 1988 (for short, 'the Act') prescribes different types of licences. There is no doubt that one has to obtain a badge in order to drive the light motor vehicle transport. It is not the case of respondent No.2 that the proximate cause of the accident was due to not having of the badge by the driver of the auto. In order to appreciate the contentions raised by the learned counsel for respondent No.2, this Court is placing reliance on the following two decisions:

In *S.Iyyapan Vs. United India Insurance Co.*[2], the Hon'ble apex Court held as follows:

> 17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,
>
> (*i*) the vehicle was not driven by a named person,
> (*ii*) it was being driven by a person who was not having a duly granted licence, and
> (*iii*) person driving the vehicle was disqualified to hold and obtain a driving licence.
>
> Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial

vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

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.

19. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs.

In ***Kulwant Singh and others Vs. Oriental Insurance Co. Ltd***[3], the Hon'ble apex Court held as follows:

10. In S. Iyyapan (supra), the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:

"19. 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."

No contrary view has been brought to our notice.

11. Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights.

The principle enunciated in the cases cited supra is squarely applicable to the facts of the case on hand.

18. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that respondent No.1 had not violated the terms and conditions of the policy so as to absolve the liability of respondent No.2. The finding of the Tribunal that respondent No.1 had violated the terms and conditions of the policy is not sustainable either on fact or on law. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

POINT No.3:

19. Learned counsel for the petitioners submitted that the Tribunal has awarded 9% interest per annum which is on higher side. Section 171 of the Act enjoins the Tribunal to award interest on the awarded amount from the date of petition till the date of realisation. Section 171 of the Act is silent with regard to the rate of interest to be awarded. The Tribunal or the Court has to award the rate of interest basing on the prevailing interest rate as well as the guidelines issued by the Reserve Bank of India from time to time. At this juncture, this Court is placing reliance on the ratio laid down in **Puttamma Vs. K.L.Narayana Reddy**[4], wherein the Hon'ble Apex Court held at para No.62 as follows:

> "In view of the aforesaid provisions of the Act, 1988 (Section 171) and the observation of this Court, as noticed above, we keep this question open for Tribunals and Courts to decide the rate of interest after taking into consideration the rate of interest allowed by this Court in similar case and other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the case is pending."

20. Having regard to the facts and circumstances of the case, I am of the considered view that granting of 9% interest is not on higher

side.

21. In the result, the Appeal is allowed in part by reducing the quantum of compensation from Rs.3,00,000/- to Rs.2,95,000/- with interest at the rate of 9% per annum from the date of petition till the date of realisation. Respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioners. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 10.03.2015
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[1]. 2009 ACJ 1298
[2] (2013) 7 SCC 62
[3] 2014 ACJ 2873
[4] (2013) 15 SCC 45