HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.3666 of 2009

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act by the insurance company challenging the judgment and award dated 04.10.2005 passed in O.P. No.1681 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-XXII Additional Chief Judge, City Criminal Court, Hyerabad.

2. The parties 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 present petition, in brief, are as follows: On 20.5.2002, at about 8.30 A.M., T.Radhakrishna Murthy and others have boarded the auto bearing No.AP 9W 1627 to go to Siddhartha Nagar side. The driver of the auto had driven the same in a rash and negligent manner and dashed against Maruthi car bearing No.AP 9AL 1035 from its opposite direction. The accident occurred due to the rash and negligent driving of the driver of the auto against whom the Station House Officer, S.R. Nagar Police Station registered a case in crime No.378 of 2002 under Section 304A IPC. Due to the accident, Radhakrishna Murthy (hereinafter referred to as, the deceased) sustained grievous injuries and died in Nizam's Institute of Medical Sciences, Hyderabad while undergoing treatment. By the time of the accident, the deceased was aged about 65 years and used to earn Rs.5,000/- per month. The first petitioner is the wife and second petitioner is the son of the deceased, and they are dependants on the income of the deceased. The auto, which belongs to the first respondent, was insured with the second respondent with effect from 28.7.2001 to 27.7.2002. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.4,00,000/- to the petitioners with interest and costs.

4. The first respondent remained *ex parte*.

5. The second respondent filed counter denying all the averments made in the petition, *inter alia*, contending that this respondent is not liable to pay compensation to the petitioners unless they establish that the driver of the auto was having valid and effective driving licence as on the date of the accident. The amount of

compensation claimed by the petitioners, under various heads, is highly excessive and exorbitant. The deceased was not an earning member as on the date of the accident. Hence, the petition may be dismissed against this respondent.

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

1. Whether the accident occurred on 20.5.2002 on account of rash and negligent driving of the auto bearing No.AP 9W 1627 by its driver?

2. Whether the petitioners are entitled to compensation? If so, to what amount and from whom?

3. To what relief?

7. During the course of the trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the respondents, R.W.1 was examined and Exs.B1 and X1 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 rash and negligent driving of the driver of the auto, which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.1,49,000/- directing the respondent Nos.1 and 2 to pay the same jointly and severally with interest at 7.5% per annum from the date of petition till the date of deposit. Feeling aggrieved by the judgment and award passed by the Tribunal, the insurance company preferred the present appeal.

9. Heard Sri R.Sridhar, learned standing counsel for the appellant–insurance company and Sri C.Vikram Chandra, learned counsel for the respondents-claimants.

10. The contention of the learned standing counsel for the second respondent is two fold: (1) first respondent had violated the terms and conditions of the policy by permitting the deceased and others to travel in the van; and (2) the amount of compensation awarded by the Tribunal is on higher side. ***Per contra***, learned counsel for the claimants submitted that the first respondent had not violated the terms and conditions of the policy. He further submitted that the amount of compensation awarded by the Tribunal is just and reasonable.

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

(1) Whether the amount of compensation awarded by the Tribunal is just and reasonable or not? and

(2) Whether the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent?

Point No.1:

12. Basing on the oral testimony of P.Ws.1 and 2 and Exs.A1 – F.I.R., and A2 – charge sheet, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto. A perusal of Ex.A3 – Motor Vehicle Inspector’s report reveals that there is no mechanical defect in the auto. As per the recitals of Ex.A4 inquest panchanama and Ex.A5 post mortem report, the deceased died due to the injuries received in a road accident that occurred on 20.5.2002. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view 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.

13. By the time of the accident, the deceased was aged about 65 years and the Tribunal has rightly applied the multiplier ‘5’. As per the testimony of P.W.1, by the time of the accident, the deceased was working as an employee. But the Tribunal has taken the income of the deceased as Rs.3,000/- per month. Even by attending any work, the deceased may earn Rs.3,000/- per month. The Tribunal, after deducting 1/3rd of the income towards personal expenses of the deceased, rightly awarded an amount of (Rs.2,000 X 12 X 5) Rs.1,20,000/- to the petitioners towards loss of dependency. The Tribunal also awarded Rs.2,000/- towards funeral expenses and Rs.15,000/- towards loss of consortium, Rs.2,000/- towards transportation and Rs.10,000/- towards loss of estate. The Tribunal considered various aspects and rightly awarded an amount of Rs.1,49,000/- to the petitioners. The amount of compensation awarded by the Tribunal is just and reasonable, and therefore, the contention of learned standing counsel for the second respondent that the amount of compensation awarded by the Tribunal is on higher side, is not sustainable. Accordingly, the point is answered against the insurance company.

Point No.2:

14. To prove the violation of terms and conditions of the policy by the first respondent, the second respondent mainly relied on the oral testimony of R.W.1 and

Ex.X1. As per the testimony of R.W.1, he has been working as Supervisor in the Office of Road Transport Authority, West Zone, Hyderabad. As per the testimony of R.W.1, one Syed Shafi Ali had obtained driving licence to drive light motor vehicle (LMV) and auto rikshaw, and the driving licence will be in force upto 06.12.2020. As per Ex.X1, the driver of the auto had taken the driving licence to drive LMV on 07.12.2000 and the same is valid upto 06.12.2020. The oral testimony of R.W.1 coupled with Ex.X1 clearly reveals that the driver of the auto was having valid driving licence to drive LMV–non transport. It is not in dispute that an auto rickshaw is LMV. The driving skill required to drive LMV-transport and non transport is one and the same. In the cross-examination, R.W.1 in unequivocal terms deposed that the driving test, for issuing driving licence for transport vehicle or non-transport vehicle, is one and the same.

15. In ***Kulwant Singh Vs. Oriental Insurance Co. Ltd*** the Hon'ble apex Court, while dealing with similar question, held as follows:

> 10. In S. Iyyapan v United India Insurance Co., 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:
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> > "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.

As per the principle enunciated in the case cited supra, mere non-obtaining of endorsement on the driving licence by itself would not amount to violation of terms and conditions of policy so as to absolve the liability of the second respondent. The facts of the case on hand are almost identical to the facts of the cases cited supra.

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this court is of the considered view that the owner of the vehicle has not violated the terms and conditions of the policy so as to

absolve the liability of the insurance company. Accordingly, the point is answered against the insurance company.

17. The first respondent being the owner of the crime vehicle is vicariously liable to the wrongful acts done by his employee. The crime vehicle was insured with the second respondent insurance company as on the date of accident. Hence, the second respondent has to indemnify the liability of the first respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

18. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in the appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 10.4.2015

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