HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

MACMA No. 642 of 2005

Judgment:

This appeal is filed challenging the judgment and award dated 15.07.2003 passed in OP No. 286 of 1988 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Warangal.

2. The parties will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows. On 19.10.1988 at about 2.00 PM the deceased P. Yakaiah (hereinafter referred to as 'deceased') was proceeding on a cycle on the left side of the road towards railway goods shed, Warangal. When the deceased reached near grain market, Warangal, the driver of the lorry bearing registration No.ATT 293 had driven the same in a rash and negligent manner and hit the cycle of the deceased. The lorry ran over the deceased due to which the deceased died on the spot. The accident occurred due to rash and negligent driving of the driver of the crime vehicle against whom a case in Crime No.66 of 1988, under Section 304-A IPC, was registered. By the time of accident the deceased was aged about 15 years and used to earn Rs.300/- per month. The petitioners are dependents on the income of the deceased. Hence, the petitioners filed the petition claiming compensation of Rs.1,00,000/-. The lorry bearing No.ATT 293 which belonged to the respondents 1 and 2 was insured with the third respondent – Insurance Company as on the date of accident, therefore respondents 1 to 3 are jointly and severally liable to pay compensation to the petitioners.

4. The first respondent remained *ex parte*. The second respondent filed counter admitting that he is the owner of the lorry in question

which was insured with the third respondent – Insurance Company as on the date of accident. It is further contended that the accident occurred due to rash and negligent act of the deceased and there was no negligence on the part of the driver of the lorry and that the amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant.

5. The third respondent – Insurance Company filed counter 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 lorry to cause the accident. The lorry was not insured with the third respondent – Insurance Company as on the date of accident and that the amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant, hence petition may be dismissed.

6. During the course of trial, on behalf of the petitioners PWs.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the respondents RWs.1 to 3 were examined and Exs.B1 to B8 were marked.

7. A perusal of the record reveals that the Tribunal granted compensation of Rs.35,000/- payable by the respondents 1 and 2 and dismissed the claim against the 3rd respondent – Insurance Company. Aggrieved by the same, CMA No.2964 of 1999 was preferred and that this Court, vide orders dated 25.02.2003, remanded the matter to the Tribunal to consider along with another batch of Ops whether the vehicle in question was validly insured with the third respondent – Insurance Company or not?

8. Basing on the oral and documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the lorry in question was validly insured with the third respondent – Insurance

Company, therefore respondents 1 to 3 are jointly and severally liable to pay compensation to the petitioners. Feeling aggrieved by the judgment and award of the Tribunal, the third respondent – Insurance Company preferred the present appeal.

9. Sri Kota Subba Rao, learned counsel for the appellant/third respondent, submitted that the Tribunal failed to consider that the vehicle in question was not validly insured with the third respondent – Insurance Company. He further submitted that the Tribunal failed to appreciate the discrepancy as to the registration number of the lorry in question and allowed the petition on assumptions and presumptions.

10. *Per contra*, learned counsel for the claimants submitted that the Tribunal has rightly considered the oral and documentary evidence and allowed the petition. He further submitted that there are no grounds much less valid grounds to interfere with the judgment and award of the Tribunal.

11. The only point that arises for consideration in this appeal is whether the lorry in question (crime vehicle) was insured with the third respondent – Insurance Company as on the date of accident or not?

12. As per the testimony of RWs.1 to 3, the lorry in question was not insured with the third respondent – Insurance Company. A perusal of Exs.B1 and B2 – copy of insurance policy and insurance certificate reveal that the registration number of the lorry in question is mentioned as AAT 293. They further reveal that the lorry bearing registration No.AAT 293, which belonged to T.Subba Rao–second respondent, was insured with the third respondent – Insurance Company with effect from 20.02.1988 to 19.02.1989. As seen from the testimony of RW.2, he is the owner of the lorry bearing No.ATT 293. In the proposal form he mentioned the lorry number as ATT 293, but the third respondent - Insurance Company, by mistake mentioned the lorry number as AAT 293 in the insurance policy Ex.B1. A perusal of Exs.B4 and B5 clearly

reveals that immediately after the accident the lorry was seized by the police and that the second respondent filed a petition before the I Additional Munsif Magistrate, Warangal for release of the vehicle bearing No.ATT 293 and the concerned Court handed over the lorry to the second respondent. If really, the lorry number is AAT 293 the Court might not have released the vehicle basing on the petition filed by the second respondent. In Ex.B8 - Motor Vehicle Inspector report also the lorry number is mentioned as ATT 293. The oral and documentary evidence placed before the Tribunal clinchingly establishes that the lorry bearing No.ATT 293 belongs to the second respondent. A perusal of the record also clinchingly establishes that the lorry of the second respondent was insured with the third respondent – Insurance Company as on the date of accident. In the charge sheet also this aspect was clarified. Simply because there is a mistake in mentioning the registration number of the lorry in the insurance policy that itself would not absolve the liability of the insurance company. The Tribunal has considered the entire oral and documentary evidence available on record in proper perspective and arrived at a conclusion that the crime vehicle was validly insured with the third respondent – Insurance Company as on the date of accident. Therefore, the third respondent – Insurance Company has to indemnify the liability of the respondents 1 and 2. The respondents 1 to 3 are jointly and severally liable to pay compensation to the petitioners. There are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal. The appeal is devoid of merit and the same is liable to be dismissed.

13. Accordingly, the MACMA is dismissed. However, in the circumstances, no costs.

14. As a sequel, the miscellaneous petitions, if any, pending in this MACMA shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 25.02.2015
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