HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1108 of 2009

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act by the claimants challenging the judgment and award dated 01.10.2008 passed in M.V.O.P. No.158 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur.

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 17.1.2006, at about 9.00 A.M., Vemula Venkayamma was waiting on the left side of road at Lakshmi Narasimha Colony, Perecharla, to go to Guntur. At that time, the driver of lorry bearing No.AP 31V 3217 came from Sattenapalli side in a rash and negligent manner and hit Venkayamma. The Station House Officer, Medikonduru Police Station registered a case in Crime No.9 of 2006 under Sections 337 and 304-A IPC against the driver of the lorry. Due to the accident, Venkayamma (hereinafter referred to as, the deceased) sustained grievous injuries and died while undergoing treatment in Government General Hospital, Guntur. By the time of the accident, the deceased was aged about 47 years and used to earn Rs.3,000/- per month. The first petitioner is the husband and second petitioner is the son of the deceased. The lorry, which belongs the first respondent, was insured with the second respondent as on the date of the accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.1,50,000/- to the petitioners with interest and costs. During the pendency of the petition before the Tribunal, the respondent No.3 was impleaded as per order dated 24.7.2008 in I.A.No.755 of 2007.

4. The respondent Nos.1 and 3 remainex *ex parte*.

5. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the driver of the lorry was not having valid and effective driving licence as on the date of the accident and therefore, there was no obligation on the part of this respondent to indemnify the liability of the owner of the crime vehicle. The amount of compensation claimed by the petitioners, under

various heads, is highly excessive and exorbitant. 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 took place due to the rash and negligent driving of the driver of the lorry bearing No.AP 31V 3217?
2. Whether the petitioners are entitled for the compensation, if so, to what amount and from which of the respondents?
3. To what relief?

7. During the course of the trial, on behalf of the petitioners, P.W.1 was examined and Exs.A1 to A4 were marked. On behalf of the respondents, R.W.1 was examined and Exs.B1 to B3 were marked.

8. On appreciation of 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 lorry, which resulted in the death of deceased, and allowed the petition in part by awarding compensation of Rs.1,40,000/- with interest at 7.5% per annum from the date of petition till the date of deposit, directing the respondent Nos.1 and 3 to pay the compensation. The petition against the second respondent – insurance company was dismissed. Feeling aggrieved by the judgment and award passed by the Tribunal, the claimants preferred the present appeal.

9. Heard Sri B.Parameswara Rao, learned counsel for the appellants–claimants and Sri Naresh Byrapaneni, learned standing counsel for the second respondent – insurance company. The respondent Nos.1 and 3 having received the notice, in this appeal, did not choose to appear.

10. Learned counsel for the claimants submitted that the finding of the Tribunal that the driver of the lorry was not having valid and effective driving licence as on the date of the accident is not sustainable. He further submitted that the Tribunal, without considering the oral testimony of R.W.1, dismissed the petition against the second respondent on flimsy grounds. ***Per contra***, learned counsel for the second respondent submitted that the Tribunal has assigned cogent and valid reasons to its findings and there are no grounds to modify or set aside the judgment and award of the Tribunal.

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

Whether the respondent Nos.1 and 3 have violated the terms and conditions of the policy or not?

Point:

12. The oral testimony of R.W.1 coupled with Ex.B1 clearly reveals that the lorry was validly insured with the second respondent as on the date of the accident. His testimony further reveals that the driver of the lorry was not having valid and effective driving licence as on the date of the accident. A perusal of the record reveals that the second respondent got issued Ex.B2 notice to the first respondent to produce driving licence of the driver of the crime vehicle. Ex.B3 is the acknowledgement. It is not mentioned in Ex.A4 charge sheet that the driver of the vehicle was not having valid driving licence as on the date of the accident. If really the driver of the lorry was not having valid driving licence, certainly the Police might have registered case against the driver of the lorry under Section 181 of the Motor Vehicles Act. This aspect was not considered by the Tribunal while appreciating the rival contentions.

13. The burden of proof lies on the second respondent – insurance company to establish that the driver of the crime vehicle was not having valid and effective driving licence as on the date of the accident. It is not possible for the claimants to secure the driving licence of the driver of the crime vehicle. The Tribunal proceeded on a wrong premise that as the insurer has taken the plea that the driver of the crime vehicle was not having valid and effective driving licence as on the date of the accident, the burden of proof lies on the claimants to prove that the driver was having valid and effective driving licence as on the date of the accident. It is needless to say that the burden of proof lies on the insurance company to establish that the insured had violated the terms and conditions of the policy so as to absolve its liability. In the cross-examination, R.W.1 in unequivocal terms deposed that they have no proof to show that the driver of the crime vehicle was not having valid and effective driving licence as on the date of the accident. This aspect was not considered by the Tribunal in right perspective. Having regard to the facts and circumstances of the case, I am of the considered view that the finding of the Tribunal that driver of the crime vehicle was not having valid and effective driving licence as on the date of the accident is not sustainable, viewed from any angle.

13. In the light of the foregoing discussion, this court is of the considered view that

the insured has not violated the terms and conditions of the policy so as to absolve the liability of the second respondent. Therefore, the respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioners. Accordingly, the point is answered.

14. Learned counsel for the claimants, in all fairness, submitted that the claimants are very much satisfied with the quantum of compensation awarded by the Tribunal. Therefore, there are no grounds to interfere with the quantum of compensation awarded by the Tribunal.

15. In the result, the appeal is allowed setting aside the judgment and award passed by the Tribunal so far as dismissing the petition against the second respondent – insurance company. Consequently, the petition is allowed by awarding a compensation of Rs.1,40,000/- with interest at 7.5% per annum from the date of petition till the date of realization. The respondent Nos.1 to 3 shall jointly and severally be liable to deposit the same with proportionate costs, within a period of two months from the date of receipt of a copy of this judgment. The miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 01.4.2015

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