THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2311 of 2009

JUDGMENT:

Aggrieved by the Award dt:04.04.2008 in M.V.O.P.No.112 of 2007 passed by the Chairman, MACT-cum-II Additional District Judge, Parvatipuram (for short "the Tribunal"), the 2nd respondent/Insurance Company preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The first claimant is the wife, claimants 2 and 3 are children of the deceased—Penta Satyam @ Satyanarayana respectively. Their case is that on 25.08.2006, the deceased, who was working as driver of the Tractor-cum-Trailer bearing Nos.AP 35 T 9472 and AP 35 T 9473 respectively, started from Duppudi village junction to go to Kotharega village for loading the gravel in the said vehicle and after unloading the gravel, returned from Kotharega and when he reached near Patharega school, one bullock cart came from opposite direction and while averting the opposite coming bullock cart swerved the tractor and thereby it turned turtle. In the resultant accident, the deceased sustained grievous injuries and died on the spot. Due to sudden demise of the deceased, the claimants became destitutes and lost their fender. On these pleas, the claimants filed M.V.O.P.No.112 of 2007 under Sec.163-A of Motor Vehicles Act, 1988 (for short "M.V Act") against respondent Nos.1 and 2, who are the owner and insurer of offending tractor-cum-trailor and claimed Rs.5,00,000/- as compensation.

b) Respondent No.1 remained *ex parte.*

c) Respondent No.2/Insurance Company filed Counter denying all material averments and urged to put the claimants in strict proof of the same. If further denied the age, avocation and income of the deceased at the time of accident. It contended that the driver of the offending vehicle was not having valid driving licence at the time of accident. Finally, it contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A5 were marked on behalf of claimants. RWs.1 and 2 were examined and Exs.B.1 and B.2 were marked on behalf of 2nd respondent.

e) The Tribunal, on appreciation of both oral and documentary evidence, had awarded a sum of Rs.3,18,500/- with costs and interest at 6% p.a under different heads as follows:

Loss of dependency		Rs. 3,06,000-00
Loss of consortium		Rs. 5,000-00
Mental agony		Rs. 5,000-00
Funeral expenses		Rs. 2,500-00
	Total	Rs. 3,18,500-00

Hence, the appeal by Insurance Company.

3) The parties in this appeal are referred as they are arrayed before the lower Tribunal.

4) Heard arguments of Smt. A. Anasuya, learned counsel for appellant/ Insurance Company on 04.06.2015. Thereafter the matter was posted to 11.08.2015, 25.08.2015, 09.09.2015, 28.09.2015 and 30.09.2015 for the arguments of respondents' side but unfortunately there was no representation on behalf of respondents. Hence, this Court was constrained to reserve the matter for judgment.

5) Learned counsel for appellant/Insurance Company impugned the award mainly on the argument that in this case the accident was occurred due to the fault of the deceased himself as the driver of the tractor-cum-trailor and therefore, the Insurance Company will be liable to pay compensation only to the extent payable under Workmens Compensation Act (for short "W.C.Act") but not under M.V. Act. She thus prayed to allow the appeal and restrict the liability of Insurance Company to that extent.

6) In the light of above argument, the point for determination in this appeal is:

"Whether the award passed by the Tribunal is factually and legally sustainable?"

7) **POINT**: Accident, involvement of the tractor bearing No.AP 35 T 9472 and trailor bearing No.AP 35 T 9473 and death of deceased are admitted facts. It is also an admitted fact that the deceased was the driver of the tractor-cum-trailer. A perusal of the evidence on record, particularly the evidence of

PW.2 would show that the deceased while averting the opposite coming bullock cart swerved the tractor and thereby it turned turtle. Hence, it can be said that the deceased himself was liable for the accident. In such scenario, the question is whether his LRs can file claim application under M.V. Act and whether the Insurance Company is liable to pay compensation under the said Act or under the W.C. Act. The point of controversy is no more *res integra.* In the case of ***M.Posham vs. S.Kalavathi***[1], wherein the question engaged with this Court was:

> *"When the accident was occurred due to the fault of deceased/driver himself, whether his L.Rs. can lay claim under Section 166 of M.V.Act i.e. under fault liability principle and whether the tribunal under the M.V. Act was empowered to adjudicate such claim?"*

Considering the above aspect, this Court after referring earlier decisions reported in ***United India Insurance Co. Ltd., Armoor Branch, Nizamabad v. Kore Laxmi and others***[2] and ***Adhikarala Jagadeeswara Rao v. Gopala Krishna Transport and others***[3], has held as follows:

> <u>Para 10</u>: *No subsequent judgments of this High Court or Apex Court are brought to my notice. So in substance, the law on the point in issue as per the latest judgment available is that when a driver himself is responsible for the accident and a claim petition is field by him or his L.Rs. under Section 166 of MV Act by choosing the Forum under M.V.Act as per Section 167, then the tribunal cannot grant him compensation under Section 166 of MV Act (on fault liability principle) but it can award compensation under Workmen's Compensation, since in a claim under*

Workmen's Compensation Act there is no need to prove the fault or negligence on the part of owner or some other.

In view of the above ratio and also in view of the fact that Ex.B.1—policy is only an Act policy, the contention of Insurance Company that it is liable to pay compensation to the extent payable under W.C. Act is accepted.

8) Hence, now compensation has to be evaluated in terms of Sec.4 of W.C.Act. The monthly income of the deceased is concerned, the Tribunal has taken it at Rs.2,250/- which appears to be reasonable one. 50% of the said amount comes to Rs.1,125/-. Fixation of factor is concerned, the deceased was aged 35 years as per Ex.A.2—postmortem report. The relevant factor for the said age as mentioned in Schedule IV of the Act is 197.06. So the compensation comes to Rs.2,21,692/-. Hence, the Insurance Company is liable to pay a sum of Rs.2,21,700/- and balance amount of Rs.96,800/- is payable by the insured/owner.

9) In the result, this M.A.C.M.A filed by the Insurance Company is allowed and ordered as follows:

i) While maintaining the compensation of Rs.3,18,500/- with proportionate costs and interest at 6% p.a, awarded by the Tribunal, the 2nd respondent in the O.P/Insurance Company is held liable to pay Rs.2,21,700/- and the balance amount of Rs.96,800/- is payable by the insured/owner.

ii) The respondents in the O.P are directed to deposit their respective extents of compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against them.

iii) No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 18.11.2015
scs

[1] 2015(1) An.W.R. 106 (A.P)

[2] 2003 ACJ 203 = 2002 (2) ALD 811

[3] 2005 (1) ALD 111