IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

M.A.C.M.A.No. 1365 OF 2005

Between:

The Oriental Insurance Company represented by its Divisional Manager

… Appellant/ R3

And

Sooci Setti Prasanna and others

… Respondents

DATE OF JUDGEMENT PRONOUNCED: 16-07-2015

SUBMITTED FOR APPROVAL:

HON'BLE SMT JUSTICE ANIS

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

HON'BLE SMT JUSTICE ANIS

MA CMA No. 1365 OF 2005

J U D G M E N T

This appeal is filed by the appellant-Insurance Company/respondent No.3, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 17.03.1999 passed by the Chairman, Motor Accident Claims Tribunal –cum- Additional District Judge, Ananthapur, in O.P.No.300 of 1999, awarding compensation of Rs. 6,35,600/-.

2. The first respondent and second respondents herein/claimants filed the above O.P. under Sections 140 & 166 of the Act, claiming compensation of Rs. 8,25,000/- on account of death of Booci Setti Chandraiah (hereinafter referred to as 'the deceased'), in a motor vehicle accident. Thereafter, third respondent was added as per order in I.A.No. 346 /02 dated 20.03.2002.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 15.7.1998 at about 4:10 p.m, when the deceased and another person were coming from Kadiri side to go to their village towards Mudigubba side on TVS 50 Moped bearing No. ADA

4287, a lorry bearing No. AP-02-T-7533 belonging to the second respondent and driven by the first respondent which was going towards Kadiri in high speed in a rash and negligent manner on a wrong side and dashed against the TVS 50 moped, and on account of which, the deceased died on the spot. On a complaint given by the driver of the lorry, the police of Patnam Police Station, registered a case in Cr.No. 43 of 1998 for the offences punishable under Sections 304-A & 337 of I.P.C. The claimants stated that the deceased was hale and healthy prior to the accident and he was aged about 36 years on the date of accident and was earning Rs. 6,000/- per month as RMP Doctor. The claimants are the wife, mother and son of the deceased. They are the dependents on the income of the deceased. The first respondent is solely responsible for causing the death of the deceased by driving the vehicle in rash and negligent manner. The second respondent is the owner of the lorry and third respondent is the insurer jointly and severally liable to pay compensation to the claimants along with interest.

5. The first respondent remained ex-parte and the second respondent-owner of the lorry filed counter stating that the petition was not maintainable either in law or on facts and the alleged accident was occurred only due to sole rash and negligent act of the deceased but not as alleged by the driver of the vehicle. Third respondent-Insurance Company filed its counter denying the averments made in the petition stating that the deceased was not holding valid driving licence and RC at

the time of accident and the amount claimed was excessive and the petitioners are put to strict proof that the deceased was aged about 36 years and was earning Rs. 6,000/- per month as RMP Doctor and prayed to dismiss the petition with costs.

6. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the first respondent got examined as PW-1 and eye witness who was travelling along with the deceased at the time of accident was examined as PW-2 and got marked Exs.A1 to A3 on her behalf. On behalf of the contesting appellant-Insurance Company no oral evidence was adduced but got marked Ex. B1 Insurance Policy.

7. The Tribunal after considered the oral and documentary evidence on record, held that the accident occurred due to rash and negligent driving of the lorry bearing No. AP 02 T 7533 and awarded an amount of Rs. 6,35,600/- with interest at 9% p.a as compensation to the respondents 1 to 3 herein payable by the appellant and respondent Nos.4 & 5 herein.

8. Aggrieved by the order of the Tribunal, the appellant/third respondent preferred the present appeal.

9. The learned counsel for the appellant argued that the Tribunal erred in fixing the earnings of the deceased as Rs. 5,000/- per month and also erred in taking the age of the deceased as 36 years. He also argued that the finding of the Tribunal is based on presumption and assumption as such the said finding is liable to be set aside. He further argued that the

tribunal should have taken the earnings of the deceased as Rs. 15,000/- per annum as per the second schedule of the Act since the dependents of the deceased failed to establish the earnings of the deceased and prayed the Court to allow the appeal and exonerate the insurance company.

10. On the other hand, the learned counsel for the claimants argued that after considering the oral and documentary evidence available on record, the Tribunal awarded reasonable compensation and rightly held that the appellant and respondent Nos. 4 & 5 herein are liable to pay compensation to the claimants and the said finding of the Tribunal needs no interference and prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel for both parties, the only point, which is to be decided in this appeal is whether the appellant had made out any case to set aside the award passed by the Tribunal?

12**.** **POINT**:

A perusal of the record shows that the Tribunal after considering the evidence of PWs 1 and 2 coupled with the documentary evidence Exs. A2 and A3 held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No. AP 02 T 7533. In the counter of the third respondent they have taken specific plea about the contributory negligence. To prove the facts, there is no oral evidence adduced by the third respondent-appellant. Considering all the aspects, the Tribunal rightly held that the accident was occurred due to rash and negligent driving of the driver of the lorry and the said finding needs no interference.

13. The learned counsel for the appellant argued that the Tribunal without any documentary proof fixed the income of the deceased at Rs. 5,000/- per month and awarded huge compensation on assumptions and presumptions. PW-1 is the wife of the deceased and PW-2 is the eyewitness to the incident. There is no dispute that the petitioners are the legal heirs of the deceased. The appellant-Insurance Company has not produced any evidence contrary to the evidence of the petitioners. Basing on Ex. A1, the Tribunal erroneously fixed the income of the deceased at Rs. 5,000/- per month. The contention of the appellant counsel to this extent of fixing the income of the deceased at Rs. 5000/- is correct because Ex. A1 is not a certificate showing that he is a RMP doctor but it shows that he undergone some advanced medical training. There is no dispute that the policy was in force at the time of accident and the deceased was a third party to the policy. Therefore, the Tribunal rightly awarded the compensation against the appellant-Insurance Company. It is no doubt true that the burden of proof lies on the claimants to show that the deceased was having valid driving licence. Like wise, the respondents 4 & 5 also not produced any evidence to show that the driver of the lorry was having valid licence at the time of accident. This matter is of the year 1999 and the claimants are the wife, mother and son of the deceased. Respondent Nos. 4

& 5 herein contended that the accident was occurred when the Insurance policy Ex.B1 was in force and respondent No.4 herein was having valid driving licence and if at all the Tribunal awarded compensation, the appellant/Insurance company is liable to pay the same.

14. The contention of the learned counsel for appellant is that by following the judgment of the Supreme Court in ***National Insurance Co. Ltd., v. Baljit Kaur & Ors.,*** [1], the appellant can recover the compensation, which was paid to the claimants from the owner of the vehicle. By following the ratio laid down in the said case, this Court directs the appellant/3rd respondent to first pay the awarded amount to the respondents/claimants and then recover the same from the owner of the vehicle i.e., respondent No.5 herein by initiating the proceedings before the executing Court without filing a separate suit for the said purpose. However, rate of interest awarded by the Tribunal at 9% is reduced to 7.5% in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and Others V. Ahmedabad Municipal Transport Service***[2] and ***Rebeka Minz and others v. Divisional Manager, United India Insurance Company Limited and another***[3].

15. With the above said observation, the appeal is allowed in part. There shall be no order as to costs. Miscellaneous Petitions, pending if any, shall stand closed.

______________ **ANIS, J**

Date: 16.07.2015

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[1] 2004 (2) SCC 1

[2] 2013 ACJ 2733

[3] 2012 ACJ 2328