THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3410 of 2009

JUDGMENT:

Aggrieved by the Award dated 04.04.2009 in MVOP No.322 of 2006 passed by the Chairman, M.A.C.T-cum- District Judge, Ongole (for short “the Tribunal”), the 2nd respondent/Insurance Company in the OP preferred the instant appeal.

2 a) The factual matrix of the case is thus:

On 09.05.2006 at about 7.35 pm when the deceased—B. Kondaiah was proceeding on his cycle on NH.5 road near Housing Board Colony, Ongole, a motor cycle bearing No. AP 26 H T/R 4517 being driven by its rider in a rash and negligent manner dashed against the deceased. It is averred that rider of the motor cycle was responsible for the accident and due to the sudden demise of deceased, the claimants became destitutes. On these averments, the claimants, who are wife and children of the deceased, filed MVO.P.No.322 of 2006 under Sections 163-A and 166 of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondent Nos. 1 and 2, who are the owner and insurer of the motor cycle and claimed Rs.3,00,000/- as compensation under different heads mentioned in OP.

b) Respondent No.1/owner of the motor cycle filed counter denying the averments made in the petition and urging to put the claimant in strict proof. He contended that his vehicle was not at all involved in the accident and as per the statement of the rider of motor cycle, one TATA Sumo dashed against the rider of the motor cycle and also the deceased-cyclist. He further contended that his vehicle was insured with R.2/Insurance Company and hence, it has to indemnify the liability of R.1, if any. He finally contended that the compensation claimed is excessive and he thus prayed to dismiss the OP.

c) Respondent No.2/Insurance Company filed Counter and denied all material averments and urged to put the claimants in strict proof of the same. It contended that as per FIR and Inquest Report, one TATA Sumo caused the accident and the driver of R.1 was not having valid and effective driving license by the time of accident. It further 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 A4 and Exs. C.1 and C.2 were marked on behalf of the claimants. On behalf of respondents, Rw.1 was examined and Exs. B1 to B4 were marked.

e) The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.3,00,000/- with costs and interest at 9% p.a under different heads as follows:

Loss of dependency Rs.2,64,000-00

Loss of estate, consortium and

Funeral expenses Rs. 32,000-00

Total Rs.2,96,000-00

(Rounded of to Rs.3,00,000/-).

Hence, the appeal by Insurance Company.

3) Heard arguments of Sri Jayanti S.C. Sekhar, learned counsel for appellant/Insurance Company and Sri N. Madhava Rao, learned counsel for R.1 to R.4. Notice sent on R.5 was returned as refused.

4) The parties in this appeal are referred to as they stood before the Tribunal.

5 a) Impugning the Award, the first contention of learned counsel for appellant is that crime vehicle i.e., motor cycle bearing No. AP 26/H T/R 4517 was not at all involved in the accident and on the other hand, Ex.C.1—FIR would show that the said motor cycle was hit by a Tata Sumo and when the motor cyclist fell down, the Tata Sumo went ahead and hit the cycle of the deceased and in the whole process, the motor cycle was not at all responsible for causing accident to the deceased. Inspite of all these facts were clearly mentioned in Ex.C.1—FIR, the Tribunal erroneously relied upon the contents in the Charge sheet and held as if the motor cyclist was responsible for the accident. On this ground, learned counsel prayed to exonerate the insurance company.

b) On another ground also, learned counsel challenged the award. His contention is that even assuming that the motor cycle was involved in the accident, the rider of the motor cycle had no valid driving license and therefore for the breach of the terms of the policy, the Tribunal ought to have exonerated the Insurance Company.

c) Thirdly, he argued that rate of interest awarded by the Tribunal is on high side and needs to be scaled down.

On these grounds, he prayed to allow the appeal.

6 a) Per contra, learned for respondent/claimants while supporting the Award, argued that the motor cyclist was very much involved in the accident and Ex.A.2-Charge sheet would clearly establish this fact. Since Ex.C.1—FIR was lodged by the motor cyclist himself, he made a false statement in the FIR as if his vehicle was not involved in the accident in order to extricate himself from the prosecution. So, though he lodged FIR with false averments, the Police after investigation, ultimately, laid charge sheet against him. These aspects were vividly discussed by the lower Tribunal and held that rider of motor cycle dashed the cycle of the deceased and caused the accident and the appellant cannot re-agitate the said issue in this appeal.

b) Secondly, with regard to driving license issue, learned counsel argued that though rider of the motor cycle had no valid driving license since the claim is in respect of the death of a 3rd party and as the policy was in force and further as it was not established by the Insurance Company that the first respondent, who is the owner of the motor cycle, knowingly handed over his vehicle to an unlicensed rider, the lower Tribunal rightly directed the insurance company to pay compensation and recover from the insured and therefore, the said finding cannot be challenged in the appeal. He, thus, prayed to dismiss the appeal.

7) In the light of the above rival arguments, the point for determination in this appeal is:

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

8) **POINT:** The first and foremost contention of learned counsel for appellant is that the motor cycle in question was not at all involved in the accident. On this plea, the appellant heavily relied on Ex.C.1—FIR. A perusal of Ex.C.1—FIR shows that it was lodged by motor cyclist—Atmakur Gopi. He mentioned therein that on that evening himself and his friend—Srinu were proceeding on their motor cycle and when they reached by-pass road near Housing Board Colony, Ongole, a white colour Tata Sumo came in opposite direction being driven by its driver and dashed their motor cycle and thereby both of them fell down and the Tata Sumo went ahead and dashed a person going on his cycle and without stopping, went away. Basing on his statement, FIR was lodged. However Ex.A.2—Charge Sheet shows that the police after investigation found with the aid of statements of eye witnesses that the motor cycle bearing No. AP 26 H T/R 4517 was involved in the accident. It is mentioned in the Charge sheet that though the motor cyclist was responsible for the accident, he stated as if an unknown Tata Sumo dashed his motor cycle and also the cycle of the deceased and that the said statement was a false one given for the fear of public. Accordingly, Police laid Chargesheet against the informant—Atmakur Gopi. The Tribunal rightly observed that Ex.C.1—FIR is only a document narrating the facts relating to the incident but the Charge Sheet is the ultimate document fixing accusation against a particular person basing on the evidence collected. Therefore, the Tribunal rightly rejected the contents in the FIR. Apart from Chargesheet, the claimants examined Pw.2—Jalagam Venkateswarlu, who is an eye witness to the incident. He stated that the accident occurred on 09.05.2006 at about 7.30 pm near Housing Board Colony, Ongole and at that time, the deceased was proceeding on a cycle and the motor cyclist came in high speed without blowing horn and hit the deceased and the deceased received injuries and died. He avouched that the rider of the motor cycle was responsible for the accident and he denied the suggestion that the accident was occurred due to hit made by the Tata Sumo firstly to the motor cycle and later to the cyclist (deceased). So, the evidence of Pw.2 also clarifies that the accident was occurred due to the hit given by motor cyclist but not the Tata Sumo. If, the version of the motor cyclist is correct, the motor cycle must be damaged but that is not the case as observed by the Tribunal by virtue of Ex.A.4-MVI Report. So, it must be said that the Tribunal rightly held that the rider of the motor cycle was responsible for the accident and the counter argument of the appellant cannot be accepted.

9) Next arguments of the learned counsel for appellant is that motor cyclist did not possess driving license. The Tribunal also observed that he could not establish having valid license by the date of accident. Considering the law on this aspect and also considering the facts that the death was of a 3rd party and the policy was in force and that the insurance company failed to establish that the owner of the motor cycle knowingly delivered the vehicle to the unlicensed driver, the lower Tribunal rightly directed the insurance company to pay compensation and recover from the insured. This finding of the Tribunal being legally and factually valid and there is no need to

interfere with the same.

10. The last argument of learned counsel for appellant is that the Tribunal granted interest at 9% pm, which is on high side and hence, the same may be reduced to 7.5% per annum. It is seen that a full Bench of Apex Court in **Ramilaben Chinubhai Parmar and others vs. National Insurance Company and others** granted interest at 7.5% p.a. Considering it, the interest is reduced from 9% to 7.5% pm.

11. In the result, this MACMA filed by the Insurance Company is dismissed and while upholding the Award passed by the Tribunal, the rate of interest granted by the Tribunal is reduced from 9% to 7.5% per annum. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 30.10.2015

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THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

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Dt. 30.10.2015

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