HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.3479 of 2009

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act by the insurance company challenging the judgment and award dated 19.12.2003 passed in O.P. No.163 of 1999 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Ongole.

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 10.1.1999, Karicheti Venkata Subbaiah and others were engaged by the first respondent, who has been running a granite quarry in R.L.Puram. At about 8.00 A.m., Venkata Subbaiah and others were proceeding in van bearing No.AP 09V 1097 for the purpose of loading and unloading granite stones. When the van reached near Cheemalamarri, the driver of the van had driven the same in a rash and negligent manner and lost control over the van due to which the van turned turtle. The Station House Officer, Cheemakurthi Police Station registered a case in crime No.1 of 1999 under Section 304-A IPC against the driver of the van. Due to the accident, Venkata Subbaiah (hereinafter referred to as, the deceased) sustained multiple injuries and died on the spot. By the time of the accident, the deceased was aged about 40 years and used to earn Rs.2,000/- per month by attending coolie work. The first petitioner is the wife, petitioner Nos.2 and 3 are the children, and fourth petitioner is the mother of the deceased, who are dependants on his income. The van, which belongs to the first respondent, was insured with the second respondent with effect from 01.8.1998 to 31.7.1999. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioners with interest and costs.

4. The first respondent filed written statement admitting that on the date of accident, the deceased was engaged as a coolie in the quarry for the purpose of loading and unloading of the material. The van, which belongs to this respondent, was validly insured with the second respondent as on the date of the accident and therefore, the second respondent alone is liable to pay compensation, if any, to the petitioners.

Hence, the petition may be dismissed against this respondent.

5. The second respondent filed counter denying all the averments made in the petition, *inter alia*, contending that this respondent is not liable to pay compensation to the petitioners unless they establish that the driver of the van was having valid and effective driving licence as on the date of the accident. The first respondent had violated the terms and conditions of the policy by permitting the deceased and others to travel in the van, which is a goods vehicle. Therefore, this respondent is not liable to pay compensation to the petitioners. 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 occurred due to rash and negligent driving of the driver of the van bearing No.AP 09V 1097?
2. Whether the petitioners are entitled to compensation? If so, to what amount and from whom?
3. To what relief?

7. During the course of the trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

8. After analyzing 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 van, which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.1,74,000/- directing the respondent Nos.1 and 2 to pay the same jointly and severally with interest at 9% per annum from the date of petition till the date of deposit. Feeling aggrieved by the judgment and award passed by the Tribunal, the insurance company preferred the present appeal.

9. Heard Sri K.S.N.Murthy, learned standing counsel for the appellant–insurance company, Smt.Kavitha Gottipati, learned counsel for the first respondent and Sri N.Madhava Rao, learned counsel for the claimants.

10. The contention of the learned standing counsel for the second respondent is three fold: (1) the first respondent had violated the terms and conditions of the policy by permitting the deceased and others to travel in the van; (2) the amount of compensation

awarded by the Tribunal is on higher side; and (3) the rate of interested awarded by the Tribunal is on higher side. ***Per contra***, learned counsel for the first respondent submitted that the first respondent had not violated the terms and conditions of the policy. Learned counsel for the claimants submitted that the Tribunal has awarded just and reasonable compensation.

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

> *(1) Whether the amount of compensation awarded by the Tribunal is just and reasonable or not?*
>
> *(2) Whether the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent?*
>
> *(3) Whether the rate of interest awarded by the Tribunal is just and reasonable?*

Point No.1:

12. Basing on the oral testimony of P.Ws.1 and 2 and Exs.A1 – F.I.R., A2 – altered F.I.R., and A5 – charge sheet, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the van. A perusal of Ex.A3-post mortem certificate and Ex.A4-inquest report reveals that the deceased died due to the injuries sustained in the accident that occurred on 10.1.1999. The second respondent also is not seriously disputing manner of accident and factum of death of the deceased. The Tribunal has assigned cogent and valid reasons to its findings on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the van, which resulted in the death of the deceased.

13. By the time of the accident, the deceased was aged about 40 years. Taking into consideration the age of the deceased, the Tribunal has applied the multiplier ‘15’. It is an admitted fact that the deceased was coolie by profession. Taking into consideration the nature of employment of the deceased, the Tribunal determined the monthly income of the deceased at Rs.1,200/- and deducted 1/3rd of it towards his personal expenses. The Tribunal arrived at a conclusion that the claimants are entitled to the compensation towards loss of dependency would be (Rs.800 X 12 X 15) Rs.1,44,000/-. The Tribunal also awarded an amount of Rs.15,000/- towards

loss of consortium and an amount of Rs.15,000/- towards loss of estate. In total, the Tribunal awarded an amount of Rs.1,74,000/-. A perusal of the record reveals that the Tribunal has awarded just and reasonable compensation. Therefore, the contention of learned standing counsel for the insurance company that the quantum of compensation awarded by the Tribunal is on higher side, has no legs to stand. Accordingly, the point is answered against the insurance company.

Point No.2:

14. The second respondent has taken a specific plea, in the counter, that the first respondent had violated the terms and conditions of the policy. It is a settled principle of law that the burden of proof lies on the second respondent to establish its plea. The first respondent, in his written statement, specifically pleaded that as on the date of the accident the deceased was engaged as a coolie in the van for transportation of granite material. The material placed before the court clinchingly establishes that the first respondent has been carrying granite business in Cheemakurthi. It is not uncommon to engage coolies in vans and mini lorries for transportation of material from quarry to different places. The material available on record clinchingly establishes that the van involved in the accident is a goods vehicle.

15. It is an admitted fact that the van, which belongs to the first respondent, was insured with the second respondent – insurance company with effect from 01.8.1998 to 31.7.1999. The policy was in force as on the date of the accident. For the reasons best known, the second respondent did not take any steps to examine one of its employees to prove that the first respondent had violated the terms and conditions of the policy. If really the policy issued by the second respondent does not the cover the risk of coolies engaged in the van, what prevented it to produce the same before the Tribunal. If a person, who is in custody of a particular document, intentionally and willfully fails to produce the same before the Tribunal or court, an adverse inference can be drawn against him. For the reasons best known, the second respondent did not produce the policy before the Tribunal. In the absence of the insurance policy, it may not be possible for the Tribunal or this court to arrive at a conclusion that the first respondent had violated the terms and conditions of the policy. The material placed before the Tribunal falls short to establish that the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent. The policy was in force as on the date of the

accident, therefore, the second respondent has to indemnify the liability of the first respondent. The Tribunal considered the material available on record and rightly held that the first respondent had not violated the terms and conditions of the policy. Accordingly, the point is answered against the second respondent.

Point No.3:

16. The contention of learned standing counsel for the second respondent that the rate of interest awarded by the Tribunal is on higher side. It is needless to say that Section 171 of the Motor Vehicles Act enjoins discretionary powers on the Tribunal to award interest from the date of petition till the date of deposit of the awarded amount. Section 171 of the M.V.Act is silent with regard to rate of interest to be awarded by the Tribunal. The Tribunal may award interest basing on the prevailing rates of interest as well as the guidelines issued by the Reserve Bank of India from time to time. This court cannot lightly interfere with the discretionary power exercised by the Tribunal unless the same is contrary to the fundamental principles of law. At this juncture, this Court is placing reliance on the ratio laid down in ***Puttamma Vs. K.L. Narayana Reddy*** wherein the Hon'ble Apex Court held at para No.62 as follows:

> In view of the aforesaid provisions of the Act, 1988 (Section 171) and the observation of this Court, as noticed above, we keep this question open for Tribunals and Courts to decide the rate of interest after taking into consideration the rate of interest allowed by this Court in similar case and other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the case is pending.

17. Absolutely there is no material on record to establish that the Tribunal has not exercised the discretionary power judiciously while awarding the rate of interest at 9% p.a.

18. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am unable to accede to the contention of learned standing counsel for the second respondent that the rate of interest awarded by the Tribunal is on higher side. Accordingly, the point is answered against the insurance company. In the light of the foregoing discussion, I am of the considered view that there are no grounds much less valid grounds to interfere with the well

considered judgment and award passed by the Tribunal.

19. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in the appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 10.4.2015

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