THE HON'BLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No. 3754 OF 2004

JUDGMENT:

This appeal is filed by the appellant/respondent No.1 under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 22.04.2004, passed by the I Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Ongole, in O.P.No.302 of 1997, awarding compensation of Rs.78,800/-.

2. The respondents 1 to 4/claimants filed the above O.P under Section 166 of the Act, claiming compensation of Rs.1,00,000/- on account of the death of one Gujjala Eswaramma (hereinafter referred to as 'the deceased') in a motor vehicle accident.

3. The brief averments made in the petition are that on 27.01.1997 at about 10.00 a.m., while the deceased and some other coolies were going on a tractor bearing No.AP27B 1262 for agricultural operations and when the said tractor reached the outskirts of the village, the driver of the said tractor drove the vehicle in a rash and negligent manner, resulting which the deceased fell down from the tractor and the trailer of the tractor ran over the deceased causing multiple injuries, and she died on the spot.

Prior to her death, the deceased used to earn Rs.2,000/- per month by doing her own agricultural work besides attending agricultural coolie work and maintaining the family. In view of the sudden demise of the deceased, the petitioners lost her service and love and affection.

The petitioners also contended that the accident took place due to rash and negligent driving of the driver of the tractor bearing No.AP27B 1262 during the course of his employment under the first respondent who is the owner of the offending vehicle and the said vehicle was insured with the third respondent. Therefore, prayed the Court to grant compensation of Rs.1 lakh.

4. The brief averments made in the written statement filed by the first respondent are as follows:

The respondent put the petitioners to prove the manner of accident, age and income of the deceased. The deceased fell down between the tractor and trailer as she sat on the trailer and died only due to her negligence. At the time of accident, the driver of the tractor drove the vehicle with normal speed and the driver is not at all responsible for the accident. The petitioners are not the dependants on the deceased and they are not entitled to claim any compensation. The tractor and trailer involved in the accident got valid permit and insured with the second respondent, and the insurance policy was in force at the time of accident. If any compensation is awarded, it shall be payable by the second respondent and the first respondent is not liable to pay any compensation, and prayed the Court to dismiss the petition with costs.

5. The brief averments made in the written statement filed by the second respondent are as follows:

The respondent put the petitioners to strict proof of all material allegations made in the petition. The tractor bearing No.AP27B 1262 was not insured with the respondent and as such the respondent is not a necessary party to the petition. Therefore, prayed the Court to dismiss the petition with costs.

6. The brief averments made in the written statement filed by the third respondent are as follows:

The driver of the crime vehicle had not driven the vehicle in a rash and negligent manner. The age, income and avocation of the deceased at the time of the accident as stated by the petitioners, is not admitted. The first respondent insured the tractor only under 'B' policy and it covers the driver only under the Cover Note No.416406, dated 04.07.1996. The person who drove the vehicle is not having a valid driving licence to drive the crime vehicle, as such there is a violation of terms and conditions of the policy and thereby the respondent is not liable to pay any compensation. The accident took place due to gross negligence on the part of the deceased. The compensation claimed by the petitioners is high and excessive and the respondent is not liable to pay any compensation to the petitioners. Therefore, prayed the Court to dismiss the petition with costs.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PW1 was examined and Exs.A.1 to A.5 were marked on behalf of the petitioners. On behalf of the respondents, RW1 was examined and got marked Ex.B.1.

8. After considering the oral and documentary evidence, the Tribunal awarded compensation of Rs.78,800/- to the petitioners along with 12% interest against the first respondent only by dismissing the petition against the respondents 2 and 3.

9. Aggrieved by the award passed by the Tribunal, the first respondent/owner preferred the present appeal.

10. The learned counsel for the appellant/first respondent argued that the appellant being the owner is not liable to pay any compensation as the insurance policy was in force. It is further argued that Ex.B.1 covers the liability for the death of the deceased, as such the insurance company is liable to pay compensation but not the owner of the tractor and trailer which was involved in the accident. Therefore, prayed the Court to allow the appeal.

11. Though notices were served to the respondents/ claimants, there is no representation on their behalf.

12. The learned counsel for the respondents 5 and 6/respondents 2 and 3 argued that the policy is an act policy; that the deceased was travelling in the tractor as a coolie but not as a third party and there is no insurance coverage; that the Tribunal, considering all the aspects, dismissed the petition filed by the claimants against them and the said finding needs no interference, and finally, prayed the Court to dismiss the appeal filed by the appellant/respondent No.1-owner of the crime vehicle.

13. Having regard to the submissions made by learned counsel for both the parties, the only point that arises for consideration is:

> Whether the appellant/1st respondent has made out any case to set aside the award passed by the Tribunal?

14. **Point**:

A perusal of the evidence on record shows that the accident was caused due to rash and negligent driving of the driver of the tractor and trailer and the said finding of the Tribunal needs no interference as there is no contra evidence to disprove the said fact.

15. Coming to the quantum of compensation, there is no evidence produced by the appellant to disprove the fact that the deceased was earning wages by doing agricultural operations. The Tribunal, after considering the evidence, fixed the total compensation at Rs.78,800/- and the said finding also needs no interference.

16. The main contention of the learned counsel for the appellant/1st respondent is that Ex.B.1 policy covers the risk of the deceased and as such the insurance company is liable to pay the compensation. A perusal of the record shows that second respondent-insurance company examined one Senior Assistant as RW1. According to RW1, the crime vehicle was insured with the second respondent-insurance company and the said policy was an act policy. The deceased was not travelling in the tractor as a passenger and she is not covered under the act policy. Under the act policy Ex.B.1, the second respondent company only indemnifies the insured in the event of accident caused or arising out of the use of the motor vehicle any where in India. But, the deceased who was travelling in a tractor as a coolie, is not a third party. Accordingly, there is no insurance coverage which is applicable to the deceased in this case as per Ex.B.1 policy. Therefore, the Tribunal, after considering all the facts, exonerated the insurance companies from liability and fixed the liability on the owner of the crime vehicle.

17. The appellant/1st respondent has not produced any evidence to show that Ex.B.1 policy covers the risk of the deceased who was travelling in the tractor on the date of accident. Therefore,

after considering all the aspects, the Tribunal fixed the liability on the first respondent only by exonerating the liability of the respondents 2 and 3, and the said finding needs no interference.

18. The learned counsel for the appellant argued that the Tribunal granted exorbitant interest of 12% per annum and the said rate of interest is high and excessive. In a decision reported in *Sanobanu Nazirbhai Mirza and others Vs. Ahmedabad Municipal Transport*[1], the Hon'ble Supreme Court awarded interest at 7.5% per annum. In another decision reported in *Rebeka Minz and others Vs. Divisional Manager, United India Limited Insurance Company Limited and another*[2], the Hon'ble Supreme Court awarded interest at 7% per annum. Thus, in view of the different rate of interests granted by the Hon'ble Supreme Court in the above judgments, I am of the considered view that the rate of interest awarded by the Tribunal is excessive and therefore, it is a fit case to reduce the rate of interest from 12% to 7.5% per annum.

19. In the result, the appeal is allowed in part by reducing the rate of interest from 12% to 7.5% per annum from the date of filing of the petition before the Tribunal till the date of realisation. No order as to costs.

20. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

07.07.2015
Anr

THE HON’BLE SMT. JUSTICE ANIS

-

CIVIL MISCELLANEOUS APPEAL No. 3754 OF 2004

–

07.07.2015

Anr

---

[1] 2013 ACJ 2733

[2] 2012 ACJ 2328