

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.882 of 2010

JUDGMENT:

Aggrieved by the Award dated 15.09.2009 in M.V.O.P.No.90 of 2007 passed by the Chairman, M.A.C.T-cum-II Additional District Judge, Kurnool at Adoni (for short 'Tribunal'), the 2nd respondent in OP/ ICICI Lombard General Insurance Company Limited, preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The claimants who are the wife, children and parents of the deceased—Tholla Thimmappa of Ballekal village in Adoni Mandal of Kurnool District filed MVOP No.90 of 2007 for the death of Tholla Thimmappa in a motor vehicle accident on the plea that on 15.06.2007 at about 6:30pm, when Tholla Thimmappa and Boya Talari Veeresh were proceeding from Santhekudlur village on a motorcycle bearing No.KA 21 E 5935 to their village Ballekal, and on the way when they reached near Chinna Harivanam Bus stop, a tractor bearing No.AP 21 V 8382 came in the opposite direction being driven by its driver in a rash and negligent manner and dashed their motorcycle causing the instantaneous death of rider and pillion rider.

b) First respondent who is the owner of the tractor remained *exparte*.

c) The 2nd respondent contested the O.P on the main contention that the tractor in question was not involved in the accident and its driver had no valid driving licence.

d) After full-fledged trial, the Tribunal negated the contention of the respondent and decreed the O.P and granted a compensation of Rs.1,95,000/- with proportionate costs and interest at 7.5% p.a against respondents 1 and 2 under different heads as follows:

Loss of dependency Rs.1,70,000/-

Loss of estate Rs. 10,000/-

Loss of consortium Rs. 10,000/-

Funeral expenses Rs. 5,000/-

Total Rs.1,95,000/-

Hence, the appeal by Insurance Company.

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

4) Heard arguments of Sri N.Mohan Krishna, learned Counsel for appellant/Insurance Company and Sri A.Jaya Shankara Reddy, learned counsel for Respondent Nos.2 to 4/claimants. Though notice to R.1 and R.6 was served but there is no representation on their behalf, hence treated as heard. As per postal endorsement R.5 expired. R.7 was impleaded vide Court order dated 12.12.2014 in MACMA MP No.5930 of 2014.

5 a) Fulminating the award, learned counsel for appellant/Insurance Company vehemently argued that the tractor in question was not involved in the accident which is evident from the fact that on the next day of the accident, in the newspaper it was published as if an unknown vehicle hit the motorcycle of the deceased and that apart, in Ex.A.1—FIR also PW.2 stated as if an unknown vehicle hit the motorcycle of the deceased. Learned counsel submitted that subsequently the claimants, owner of the tractor and the police colluded together and setup the tractor in question to claim compensation.

b) Secondly, he argued that even assuming that the tractor was involved in the accident, still the Insurance Company cannot be fastened with liability for the reason that the driver had no valid driving licence which is evident from the evidence of RW.2.

c) Thirdly, he argued that the compensation is highly exorbitant and needs to be reassessed and the Tribunal ought to have applied '16'

instead of '17' as multiplier.

On these arguments, learned counsel prayed to allow the appeal.

6 a) Per contra, learned counsel for respondents/claimants argued that the tractor in question was very much involved in the accident. PW.2 was not an eye witness to the accident and as at the time of giving FIR, he did not know which vehicle hit the motorcycle, he mentioned in the FIR as if an unknown vehicle hit the motorcycle. He argued that the evidence of PW.2 is only helpful to the extent that an accident was occurred causing the death of deceased but his evidence cannot be taken up to conclude that the tractor was not involved in the accident as he was not an eye witness. On the other hand, the evidence of PW.4 who was eye witness to the accident and PW.3—S.I of Police who conducted investigation will clinch the issue and establish that the tractor was very much involved in the accident. As against the said evidence, no contra evidence was produced by the Insurance Company to establish its stand that the tractor was not involved in the accident. He argued that the Insurance Company now cannot contend as if the tractor was not involved in the accident. He further contended that the claimants can establish the occurrence of accident and involvement of offending vehicle by preponderance of probabilities. To buttress his argument, he relied upon the decision reported in ***National Insurance Co.Ltd., Khammam vs. Shaik Yousuf Bee and others.***

b) Secondly, he argued that even as per the evidence of RW.2, the tractor driver was having licence to drive Heavy Transport Vehicle and Light Motor Vehicle and since the tractor is a Light Motor Vehicle (LMV), the driver can be held having valid driving licence at the time of accident.

He thus prayed to dismiss the appeal.

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

“Whether the judgment of the trial Court is factually and legally sustainable?”

8) **POINT**: The claim of the claimants is that when the deceased and one Boya Talari Veeresh were returning from Santhekudlur village to Ballekal village on the night of 15.06.2007, on the way the Tractor bearing No.AP 21 V 8382 came in the opposite direction and dashed the motorcycle causing their instantaneous death. The contention of the Insurance Company is that the tractor was not at all involved in the accident and it was implicated subsequently. The claimants in order to prove the factum of accident and involvement of the tractor in question, examined Pws.2 to 4 and filed Exs.A.1 to A.4. PW.2—Boya Talari Mallikarjuna on his own admission was not an eye witness to the accident. According to him, on knowing about the accident, he went to the scene and found both the deceased and shifted them to the area hospital, Adoni and then lodged Ex.A.1—FIR. So naturally in Ex.A.1 he mentioned as if an unknown vehicle hit the motorcycle of the deceased. Therefore, as rightly argued, his evidence is helpful only to disclose that an accident took place causing the death of the deceased. However, basing on his evidence, it is not apt to conclude that tractor in question was not at all involved in the accident.

a) Then we have the evidence of PWs.3 and 4. PW.4 is cited as an eye witness to the accident (LW.12 in Ex.A.2—charge sheet). His version is that on the evening of 15.06.2007, himself and his brother—Boya Hanumaiah were waiting at Siruguppa junction to go to Nagarala village for attending marriage of their relatives and at that time, the offending tractor came from Madhavaram road and they stopped the tractor and requested for lift and the tractor driver allowed and they proceeded. After passing Chinna Harivanam bus stop, they noticed two persons coming on motorcycle in the opposite direction and in the meanwhile, the driver of the tractor drove the vehicle at high speed and in a rash and negligent manner and dashed the motorcycle and the rider fell down. His further version is that they found the injured not in a talking condition and the tractor driver hurried them to board the tractor to go away as otherwise, anybody who noticed the accident may kill him. As such, PW.4 and his brother boarded the tractor and went to Itikala village. They came to know

that the tractor driver is Shaik Noor of Bellekal village and the tractor number is AP 21 V 8382. On enquiry, they came to know that the driver was going to Raravi village for ploughing the land. This is the evidence of PW.4. He was exhaustively cross-examined but nothing substantial was extracted to establish that he did not witness the accident. PW.3 is the Investigating Officer who claimed that basing on the evidence of PW.4 and LW.11—brother of PW.4, he came to know that the accident was caused by the offending tractor and so he seized the tractor and arrested the accused and after completing the investigation laid charge-sheet. So the evidence of PWs.3 and 4 clinchingly establishes that the tractor in question was very much involved in the accident. It must be noted that the claim of PW.4 that he witnessed the accident and the tractor in question was involved in the accident was amply established by Ex.A.4—inquest report. In Ex.A.4 it was clearly mentioned that PW.4 and his brother witnessed the accident while traveling in the offending tractor. Ex.A.4—Inquest Report was prepared on the early morning of 16.06.2007 i.e, immediately on the next day morning of accident. Since Ex.A.4 was prepared within short time after the accident, the authenticity of the contents in Ex.A.4 can be accepted because manipulation of the facts was not possible within such short-time. Therefore, the claimants could establish the factum of involvement of the tractor in question in the accident. In the cited decision, it was held that it is enough for the claimants to establish involvement of vehicle basing on preponderance of probabilities. In the instant case, the evidence produced by the claimants established the involvement of the tractor more than by preponderance of probabilities. Except basing its contention on a newspaper report, the appellant/Insurance Company has not produced any cogent evidence to establish that the tractor was not involved in the accident. Hence the argument of the appellant in this regard cannot be countenanced.

9) Then the second argument of the appellant is concerned, even according to RW.2, the tractor driver was holding valid driving licence to drive Light Motor Vehicle (Transport) and Heavy Transport Vehicle

during the relevant period. The tractor fits into either of the classifications. So it cannot be said that the driver had no valid driving licence. Therefore, this argument of appellant also cannot be accepted.

10) Thirdly it is contended by appellant that compensation became excessive in view of applying '17' as multiplier. I find force in this argument. The deceased was aged 35 years and as per the multiplier table provided by the Hon'ble Apex Court in the judgment of ***Smt. Sarla Varma vs. Delhi Transport Corporation***, which was in force by the date of award in the instant case, '16' is the appropriate multiplier. So compensation needs to be reassessed. The loss of dependency comes to Rs.1,60,000/- (Rs.15,000/- x '16' x 2/3rd). So in the ultimate analysis, the total compensation is reduced from Rs.1,95,000/- to Rs.1,85,000/-.

11) In the result, this MACMA filed by Insurance Company is partly allowed and ordered as follows:

- a. The compensation awarded by the Tribunal is reduced from Rs.1,95,000/- to Rs.1,85,000/- with proportionate costs and simple interest at 7.5% per annum from the date of OP till the date of realization.
- b. Respondents are directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them.

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

U.DURGA PRASAD RAO, J

Date: 15.04.2015

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