THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1206 of 2010

JUDGMENT:

Challending the Award dated 11.09.2009 in O.P.No.1233 of 2007 passed by the Chairman, M.A.C.T-cum-VII Additional Metropolitan Sessions Judge-cum-XXI Additional Chief Judge, Hyderabad (for short “Tribunal”), the 2nd respondent in OP/ ICICI Lombard General Insurance Company Limited, preferred the instant MACMA.

2) On factual side, on 14.10.2006 at about 5.30 pm the claimant along with his wife was proceeding on scooter bearing No. ATY 8643 from Neredmet towards Tunkikhalsa village and when they reached near Tunkikhalsa village outskirts at old English Medium School, a tractor-cum- trailer bearing No.AP 23 G 8470 and AP 23 G 9150 being driven by its driver at high speed and in a rash and negligent manner dashed the scooter of the claimant, due to which, the claimant and his wife fell down and sustained grievous injuries. Thereafter, they were shifted to Gandhi Hospital, Secunderabad, for better treatment. It is averred that due to the accident, he received fractures and underwent three major operations and he spent Rs.20,000/- towards medical expenditure. It is further averred that the driver of the offending vehicle was responsible for the accident. On these pleas, the claimant filed M.V.O.P.No.1233 of 2007 under Section 166 of Motor Vehicles Act, 1988 (for short “Act”) against respondents 1 and 2, who are the owner and insurer of the offending vehicle and claimed Rs.2,50,000/- as compensation.

b) Respondent No.1 remained *ex parte*.

c) Respondent No.2/Insurance Company filed counter and denied all the material averments and urged to put the claimant in strict proof. R2 denied the age, avocation and income of the claimant. He further denied that the driver of the offending vehicle was having valid driving license at the time of accident. Finally, R.2 contended that the compensation claimed by the claimant was high and excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A.1 to A8 were marked on behalf of the claimant. RW.1 was examined and Exs.B1 to B4 were marked on behalf of respondent No.2.

e) The Tribunal on appreciation of oral and documentary evidence awarded a total sum of Rs.1,92,400/- with proportionate costs and interest at 6% p.a. under different heads as follows:

For permanent disability Rs. 1,22,400-00

For pain and suffering Rs. 60,000-00

For Medical expenses Rs. 2,000-00

For extra nourishment Rs. 2,000-00

For loss of income Rs. 6,000-00

Rs. 1,92,400-00

Hence, the appeal by Insurance Company.

3) The parties in the 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 M. Krishna Reddy, learned counsel for 1st respondent/claimant. Notice sent to R.2/owner of the vehicle was not yet returned.

5) Learned counsel for appellant challenged the award on two main grounds:

a) Firstly, that the driver of the tractor had no valid driving licence which was investigated and found out by the Surveyor appointed by the Insurance Company as the Surveyor made an application to the R.T.A for verification of driving licence No.44022/HE/92 but the R.T.

Authorities stated that the said driving licence was not tallied with their office records which shows that the tractor driver was not holding valid driving licence and as such the Tribunal ought to have exonerated the Insurance company for breach of the terms of the policy caused by the insured.

b) Secondly, challenging the award, learned counsel argued that the Tribunal erred in choosing '17' as multiplier. His argument is that since the claimant was aged about 32 years, the appropriate multiplier will be '16' as per the multiplier table provided by the Apex Court in the case of ***Smt. Sarla Varma vs. Delhi Transport Corporation.***

Learned Counsel thus at the first instance argued to exonerate the Insurance Company from the liability and alternatively to reassess the compensation and reduce it suitably.

6 a) Per contra, while supporting the award learned counsel for first respondent/claimant firstly argued that the tractor driver had valid driving licence which is evident from the fact that the Surveyor himself attached the photostat copy of licence to Ex.B.4 for verification by the R.T.A. Though the Insurance Company claims that the R.T. Authorities replied that the driving licence particulars mentioned in the photostat copy of the driving licence were not tallied with their office records, the Insurance Company did not examine either the Surveyor or the R.T. Authorities to establish the said fact and therefore, the Tribunal rightly discarded the contention of the Insurance Company in this regard.

b) Secondly, he contended that in fact the compensation awarded was too low inasmuch as the Tribunal has taken the income of the claimant on a lower side though he happened to be a skilled mason and further, it has not considered the future prospects of the claimant and thereby the compensation was drastically reduced and therefore compensation need not be further reduced. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the points for determination are:

i. Whether the Tribunal was right in fastening the liability on Insurance Company?

ii. Whether the compensation awarded by the Tribunal was just and reasonable or needs interference?

iii. To what relief?

8) **<u>POINT No.1</u>**: It is the contention of the Insurance Company that the driver of the offending tractor namely Y. Ashok Reddy had no valid driving licence and thereby the Insurance Company can repudiate its liability for breach of one of the terms of the policy which stipulates that the vehicle should be driven by a duly licensed driver only. It is needless to emphasise that when Insurance Company takes such a plea, the burden will be heavy on it to prove the non-possession of licence by its driver. RW.1 who is the Manager (Legal) of the Insurance Company in his evidence deposed that the company appointed a investigator namely Ch. Suresh to ascertain the driving licence particulars of the driver and he submitted Ex.B.4— application to R.T.A Hyderabad, East Zone, for verification of the driving licence particulars by attaching the photostat copy of driving licence of the tractor driver and on verification, the RTA Authorities stated that the driving licence No.44022/HC/92 was not tallied with their office records. Thus, basing on the said information, the Insurance Company clams that the driver had no valid driving licence. When Ex.B.4 is perused, apart from the application, it contains a photostat copy of the information purported to be issued by additional licensing authorities, R.T.A, Hyderabad, East Zone and also a photostat copy of the driving licence of Y. Ashok Reddy. As rightly observed by the Tribunal, except filing Ex.B.4, the Insurance Company has not summoned and examined any employee from RTA in support of its contention. The photostat copy of the letter of information purported to be issued by additional licensing authority cannot be accepted on its face value without the supporting evidence

from the RTA Office. Hence it can only be held that the Insurance Company failed to discharge its burden of proving the lack of driving licence by the driver. Having failed in its attempt before the Tribunal, the Insurance Company now cannot harp to be exonerated on the ground of alleged breach of policy. This point is answered accordingly.

9) **POINT No.2**: Now coming to the quantum of compensation, the Tribunal awarded Rs.1,22,400/- (Rs.3,000 x 12 x 17 x 20%) for 20% permanent disability. As rightly argued by the appellant, correct multiplier for the persons in the age group of 31 to 35 years is ‘16’ but not ‘17’. Thus the Tribunal committed error in choosing ‘17’ as multiplier for the age of claimant which was 32 years. Hence, the compensation is reassessed which comes to Rs.1,15,200/- (Rs.3,000 x 12 x 16 x 20%). So in the ultimate analysis, the compensation is reduced from Rs.1,92,400/- to Rs.1,85,200/-.

10) **POINT No.3**: 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.1,92,400/- to Rs.1,85,200/- with proportionate costs and simple interest at 6% 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: 22.04.2015

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