HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.606 OF 2005

JUDGMENT:

The second respondent – insurance company in O.P.No.198 of 2003 on the file of Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Medak at Sanga Reddy, who is the appellant herein aggrieved by the order dated 08.11.2004, rendered by the said Tribunal granting a total sum of Rs.4,38,000/- as compensation for the death of one Ramesh Reddy @ Ramesh in a road accident despite there being violation of terms and conditions of the policy under Ex.B1 as the driver of the auto was not possessing valid driving licence to drive the vehicle, preferred the present appeal.

2. For the sake of convenience, the parties hereinafter referred to as arrayed in the O.P. before the Tribunal.

3. The facts in brief are that on 03.01.2003, the deceased Vanga Ramesh Reddy @ Ramesh along with two others were proceeding to their village from Siddipet in auto bearing No.AP-28T-7891, driven by the deceased and when it reached near Sericulture Office on the way to Lingareddipally village, another auto bearing No.AP-15V-3416 driven by its driver in a rash and negligent manner in opposite direction dashed the auto against the deceased and others who were travelling, due to which, the deceased sustained multiple injuries on vital parts of his body and succumbed to the same while he was being shifted to Government Hospital, Siddipet. The concerned police also registered a case in Crime No.3 of 2003 against the driver of the opposite vehicle bearing No.AP-15V-3416. The petitioners, who are wife and parents of the deceased contend that the deceased was 26 years old, earning Rs.4,000/- per month as a driver, possessing driving licence No.11476/SPT/1998, on account of whose death

they lost dependency, sought a total sum of Rs.5,00,000/- against respondents 1 and 2, who are owner and insurer of the opposite vehicle under Section 166 of the Motor Vehicles Act, 1988.

4. Before the Tribunal, the 1st respondent, owner of the auto, remained *ex parte.* The 2nd respondent, insurer, opposed the claim and a specific stand has been taken that the accident has occurred due to head on collision by both the autos, the fault of the deceased driver cannot be ruled out and therefore, the owner and insurer of the auto which the deceased was driving are necessary parties and the claim is, therefore, bad for non-joinder of parties.

5 . The Tribunal has framed three issues in the direction of fixing responsibility for the accident. During enquiry, the first petitioner examined herself as PW.1 besides examining one Laxmi Narayana, who was accompanying the deceased as a passenger, as P.W.2 and marked Exs.A-1 to A-5 to substantiate their claim. On behalf of the second respondent, the Branch Manager from the local office was examined as R.W.1 and one Miya Jan, official from RTI Department examined as R.W.2 while marking the copy of the insurance policy as Ex.B-1 to prove the breach of terms and conditions of policy.

6. The Tribunal, on over all assessment of the evidence on record held issue No.1 in favour of the petitioners. On issue No.2, having taken the daily earning of Rs.100/- and Rs.3,000/- per month and annual income at Rs.36,000/- by deducting 1/3rd towards personal expenses, the contribution was taken at Rs.24,000/-. By applying multiplier ‘17’ as the deceased was 26 years old as on the date of accident, the Tribunal assessed loss of dependency at Rs.4,08,000/-. The Tribunal granted further sum of Rs.15,000/- towards loss of estate and Rs.15,000/- towards loss of consortium and, thus, a total sum of Rs.4,38,000/- was granted with proportionate costs and interest.

7. The aforesaid order is under challenge in the instant appeal on the

grounds that the driver of the crime auto bearing No.AP 15 V 3416 was possessing non-transport driving licence whereas, he was driving the vehicle which was carrying passengers and transport vehicle. It is stated that the evidence of R.W.2 Junior Assistant from RTI office clearly establishes that the driver of the crime auto was not authorised to drive transport vehicle and his version is also substantiated through Exs.B2 and B3 and the Tribunal ought to have taken note of the same and given due weight to the evidence of R.W.2 and the contents of Exs.B2 and B3 and exonerated the insurance company as held by the Hon'ble Apex Court in ***MALLE PRAKASH RAO v. MALLE JANAKI AND OTHERS.*** It is also stated in grounds that the Tribunal was not correct in fixing the earnings of the deceased at Rs.3000/- per month in the absence of any legally acceptable evidence let in by the petitioners.

8. Heard Sri T.Ramulu, learned standing counsel for the insurance company – appellant and Sri C.V.Bhaskara Reddy, learned counsel for respondents 1 to 3 and Sri K.M.Mahender Reddy, learned counsel for respondent No.4.

9. Perused the order and oral and documentary evidence let in by the petitioners.

10. The short question that arises for consideration in the instant appeal is whether the driver of the crime vehicle was possessing driving licence for driving auto rickshaw non-transport vehicle and was not authorised to drive the transport vehicle and whether the same amounts to breach of terms and conditions of policy and if so what is its affect?

11. So far as the factual aspect is concerned as narrated above, there is absolutely no dispute since driver of the crime vehicle was possessing non-transport driving licence, but he was driving transport vehicle on the date of accident.

12. Learned counsel for the appellant submits that in view of the decision of the Hon'ble Supreme Court in ***S. IYYAPAN v. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER and KULWANT SINGH AND OTHERS v. ORIENTAL INSURANCE COMPANY LIMITED,*** the appellant is not pressing the first ground touching violation of conditions of the insurance policy.

13. With regard to quantum of compensation, learned counsel for the appellant would submit that the Tribunal was not right in fixing monthly earnings of the deceased at Rs.3,000/-. The fact that the deceased was driver of auto-rickshaw is not in dispute. The accident in the instant case had taken place in the year 2003. Therefore, it cannot be said that the Tribunal went wrong in recording the finding that the deceased was earning Rs.100/- per day.

14. Therefore, fixing the earnings of the deceased at Rs.100/- per day or Rs.3,000/- per month or Rs.36,000/- per annum cannot be faulted with. The Tribunal has deducted 1/3rd towards his personal expenses and the remainder of Rs.24,000/- per annum as contribution to the family. The dependants are three (3) in number, therefore deduction of 1/3rd from his earnings towards his personal expenses is in accordance with the guidelines laid down by the Hon'ble Supreme Court in ***SARLA VERMA v. DELHI TRANSPORT CORPORATION***. The deceased was aged 26 years old at the relevant time. The Tribunal has applied multiplier '17', placing reliance on the decision of the Hon'ble Supreme Court in ***ROAD TRANSPORT CORPORATION, TRIVANDRUM v. SUSAMMA THOMAS AND OTHERS***. Even as per the decision in Sarla Verma's case(Supra 2), the relevant multiplier is '17'. Therefore, even the multiplier '17' applied by the Tribunal cannot be faulted with. Thus, there is no merit even in the second ground agitated by the appellant.

15. Concerning rate of interest, the Tribunal has granted it at 9% per annum, but in view of the decision of the Hon'ble Supreme Court in ***RAJESH AND OTHERS v. RAJBIR SINGH AND OTHERS,*** the same is reduced to 7.5%

per annum. Except reducing the rate of interest, the order under challenge is maintained in all other aspects.

16. Accordingly, the Civil Miscellaneous Appeal is partly allowed confirming the award passed by the Tribunal and reducing the interest as stated supra. There shall be no order as to costs.

17. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

February 19, 2015.

Rns