THE HON'BLE SRI JUSTICE S. RAVI KUMAR

MACMA No.174 of 2013

Date:18.08.2016

Between:

Reliance General Insurance rep by its Branch Manager, Br. Office, Nirmal (Insurer of Swaraj Mazda bearing No.AP-01—V-6670 vide Insurance cover Note No.10800727088 valid from 26-12-2008 to 25-12-2009).

... Appellant.

AND

Moddu Mamatha and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

MACMA No.174 of 2013

JUDGMENT:

This appeal is preferred against order dated 14-06-2011 in O.P.No.82/2009 on the file of Motor Accidents Claims Tribunal-cum-IX Additional District & Sessions Judge, Nizamabad at Kamareddy.

2. Respondents 1 to 3 herein filed application under Section 166 of the Motor Vehicles Act as legal representatives of deceased-Moddu Anjaneyulu contending that on 29-12-2008, the deceased was driving Tata Indica Car bearing No.AP-05-V-5783 and at about 6:30 A.M., when said car reached Narsingi Village on National Highway No.7, one Swaraj Mazda bearing No.AP-01-V-6670 came at high speed in a rash and

negligent manner in opposite direction and dashed against Tata Indica Car as a result, inmates of the car suffered injuries and the driver-Moddu Anjaneyulu was shifted to Government Hospital at Ramayampet and he died while undergoing treatment.

They contended that deceased was aged about 21 years and earning Rs.10,000/- as driver and that they are entitled for compensation of Rs.29,52,000/- but they restricted their to claim Rs.10,00,000/-.

The appellant herein is the Insurance Company and the Insurance Company field counter disputing the claim and contended that the accident was not due to the negligence on the part of the driver of Swaraj Mazda, but it was only due to negligence of driver of Tata Indica Car, therefore they have no liability to pay any compensation. They also contended that the claim is made in collusion with the owner of the vehicle to have financial gain and that the compensation is exorbitant and without any basis. On these contentions, Claims Tribunal conducted enquiry during which two witnesses were examined and five documents were marked on behalf of the claimants and no witness was examined and no document was marked on behalf of the appellant herein and respondents before the Court below. On a over all consideration of the oral and documentary evidence, Tribunal granted a sum of Rs.6,71,000/- by taking the income of the deceased at Rs.4,500/- per month and age of the deceased as 29 years for which multiplier '18' was taken.

Questioning the said order, Insurance Company preferred the present appeal.

3. Heard arguments.

4. The main contention of the Insurance Company is that Tribunal failed to see that the accident was due to the negligence on the part of the deceased, who was driving Tata Indica Car and as the insurer and owner of Tata India are not made parties to the O.P., the claim is liable to be dismissed for non-joinder of parties. It is also contended that the Tribunal failed to see that the driver of the injured vehicle did not have any driving

license and further contended that there is no proof regarding income of the deceased and in the absence of any proof, the Tribunal has taken Rs.4,500/- per month instead of taking Rs.3,000/-. The other objection of Insurance Company is that the multiplier '18' is on higher side.

5. Now the point that would arise for my consideration in this appeal is whether order of the Court below is legal, proper and correct?

6. **Point:-** As seen from the record, the only objection taken before the trial Court is that the accident was due to the negligence of the deceased himself and that there is no negligence on the part of driver of Swaraj Mazda. There is no dispute with regard to the accident that took place on 29-12-2008. One of the eye-witness to the accident was examined as P.W.2 and the claimants got marked certified copy of FIR, certified copy of charge sheet, certified copy of scene observation report, certified copy of inquest report and certified copy of postmortem report as Exs.A1 to A5. It is clear from these documents, police after investigation, fixed responsibility on driver of Swaraj Mazda for the accident and filed a charge sheet against him. P.W.2–eye-witness also supported the version of claimants that the accident was due to the negligence of Swaraj Mazda driver. There is no rebuttal evidence from appellant to support their plea that the deceased himself was negligent and the accident occurred on account of his rash driving. When the evidence of P.Ws.1 & 2 is supported and corroborated with documents like Exs.A1 to A3, the objection of the Insurance Company with regard to cause of accident cannot be accepted without any contra evidence. Therefore, the first objection of the Insurance Company is negatived.

7. The next contention of the appellant is that lower Tribunal took monthly income at Rs.4,500/- without any proof. As seen from the record, the claimants contended that the deceased was earning Rs.10,000/- per month as driver but as they have not produced any documentary proof, the Tribunal by taking into consideration that a driver in those days would earn not less than Rs.150/- per day fixed the income at Rs.4,500/-.

Admittedly, the deceased was a driver and Rs.150/- per day as remuneration for a driver in 2008 is not on higher side and it is quite a reasonable amount, therefore, the objection of the insurance company on this aspect is also not tenable.

8. The other objection of the Insurance Company is that the multiplier taken by the Tribunal is on higher side. Except taking a ground, nothing is placed before this Court to show that the deceased was not aged 29 years for which multiplier '18' is applicable. In the absence of any such material, the objection of the Insurance Company cannot be accepted.

9. On a scrutiny of the material, with reference to the findings of the Court below, I am of the view that the Tribunal has not committed any error in appreciating the evidence on record and in granting Rs.6,71,000/- as compensation by taking the income of the deceased at Rs.4,500/- and multiplier at '18'.

10. For these reasons, I am of the view that the appeal is devoid of merits and liable to be dismissed.

11. Accordingly, appeal is dismissed as devoid of merits and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:18.08.2016
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