HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.228 OF 2009

JUDGMENT:

The present appeal is preferred by respondent No.2 - M/s. United India Insurance Company Limited, Nizamabad, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree, dated 19-12-2007, in O.P. No.1516 of 2002, passed by the learned Chairman, I Additional Motor Accident Claims Tribunal, Nizamabad (for short 'the Tribunal'), mainly questioning the liability fastened on it on the ground that the driver of the motor cycle bearing registration No.AP 1C 7542 was not holding valid and subsisting driving license at the time of accident and the Tribunal overlooked the same and fastened joint and several liability on it, hence, sought to set aside the same.

2. By the aforesaid order, a compensation of Rs.4,04,000/- was awarded by the Tribunal as against the claim of Rs.10,00,000/- laid under Section 166 of the Act read with Rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989 for the death of one Mechineni Laxman Rao, husband of petitioner No.1 and incidentally, father of petitioner Nos.2 and 3.

3. Respondent No.4 and the appellant herein, who

are owner and insurer of motorcycle bearing registration No.AP 1C 7512, are respondent Nos.1 and 2, respectively, while respondent Nos.1 to 3 are petitioner in OP before the Tribunal.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in OP before the Tribunal.

5. The basic facts are that on 10-09-2002 at about 11.00 a.m., when the said M. Laxman Rao was going on foot from Kuntala village towards Ambakunta village, a motorcycle bearing registration No.AP 1C 7542 driven by its driver in a rash and negligent manner at high-speed came from opposite direction on wrong side and hit him, due to which, he fell down and the front wheel ran over him resulting in crush injuries and head injury with multiple fractures. He was shifted to Government Headquarters Hospital, Nizamabad, where he succumbed to injuries on 11-09-2002.

i) The petitioners, claiming that they spent Rs.60,000/- towards medical expenses; that the deceased was earning Rs.15,000/- per month being an agriculturist and a contractor and used to contribute his entire earnings to the family; sought the aforesaid sum from respondent Nos.1 and 2, who are owner and insurer of the motorcycle.

6. Respondent No.1, owner of the motorcycle, remained *ex parte* before the Tribunal.

7. Respondent No.2 raised all relevant pleas including the plea requiring the petitioners to prove that the driver was holding a valid, effective and subsisting driving license.

8. The Tribunal framed the following three issues.

"(1) Whether the motor vehicle accident occurred due to the rash and negligent driving of the vehicle motor cycle bearing No.AP-1-7542 by its driver resulting in death of the deceased?

(2) Whether the petitioner is entitled to compensation? If so, to what amount and against which of the respondents?

(3) To what relief?"

9. On behalf of the petitioners, PWs.1 to 3 were examined and Exs.A-1 to A-6 were marked. Of course, no direct issue has been framed touching that the driver of the motorcycle was not holding valid subsisting license. However, the Insurance Company - respondent No.2 has examined RW.1 in that direction and marked Exs.B-1 to B-3. He was cross-examined by the learned counsel for the petitioner and, therefore, it has to be held that non-framing of that issue is inconsequential as parties entered into trial and led evidence touching the said aspect also.

10. The Tribunal on issue No.1 basing on the

evidence of PW.3, an eye-witness to the occurrence, besides the evidence of PWs.2 and 3, held that the death of the deceased occurred due to rash and negligent driving of the motorcyclist. The Tribunal has dealt with the issue relating to driving license of the driver of the motorcycle in paragraph No.11 and the submission made by the learned counsel for the petitioners in paragraph No.12 thus:

> "11. To rebut the evidence of Petitioners the Respondent No.2 got examined its Senior Assistant M.V.Krishna Rao as RW.1, who deposed that their branch has issued motor cycle package policy bearing No.050702/31/02/00218 covering the new vehicle Hero Honda Splender belonging to Mr.R. Muthagoud resident of Gollamanda which is valid from 24-5-2002 to 23-5-2003, that as per M.V.I. report the driver has not produced driving licence at the time of inspection on the date of accident, that as per charge sheet it was established that driver was not holding the licence at the time of accident, hence, in view of violation of policy, Respondent No.2 is not liable to pay any compensation and prayed to dismiss the claim petition with costs.
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> 12. It is argued by the Counsel for Petitioner that the driver of the motor cycle was having valid driving licence at the time of accident and produced driving licence, R.C. and Insurance Policy and also informed to Insurance company regarding accident and the accident occurred only due to the negligence of the driver of vehicle. It is further argued that Exs.B2 and B3 are created for the purpose of the case to avoid compensation."

and finally recorded that respondent No.2 is also jointly and severally liable to pay compensation, having determined the same, taking the age of the deceased as 55 years, applying multiplier '8', the monthly income at Rs.6,000/- or annual income at Rs.72,000/-, deducting 1/3rd there-from, arrived at Rs.3,84,000/- towards loss of dependency. By adding Rs.15,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses, granted a total sum of Rs.4,04,000/- as compensation mulcting liability on both the respondents jointly and severally.

11. It is the aforesaid order which is under challenge in the instant appeal preferred by respondent No.2 challenging both the aspects of mulcting liability as well as quantum of compensation contending in the grounds that the Tribunal has not appreciated the evidence on record properly and, therefore, sought to allow the appeal.

12. Heard Sri Ravi Shankar Jandhyala, learned standing counsel for the appellant - Insurance Company, and Sri P. Radhive Reddy, learned counsel for respondent Nos.1 to 3 - petitioners. Though, service was completed on respondent No.4, owner of the motorcycle, none appears for him.

13. Perused the order and the material on record, both, oral and documentary.

14. The aforesaid extracted paragraphs of the order under challenge would show that the Tribunal only dealt with what was contended and the evidence of RW.1 thereon, but has not given any definite finding and just raised and fixed the joint and several liability.

15. When the evidence of RW.1 is examined, he made assertions that the driver of the motorcycle did not produce the license before the Investigating Officer as could be seen from the final report, Ex.B-3, and also before the Motor Vehicle Inspector at the time when the vehicle was inspected. A perusal of Ex.B-2 and B-3 would show that the Motor Vehicle Inspector as well as the Investigating Officer, who laid the charge sheet clutching the offences punishable under Section 304 (A) IPC and Section 3/181 of the Act, have recorded in Exs.B-2 and B-3, respectively, that the accused did not produce the license to drive the motor vehicle involved in the accident. When the Branch Manager examined as RW.1 has not only asserted, basing on the averments in Exs.B-2 and B-3, but produced Exs.B-2 and B-3, certainly, the initial burden resting on the Insurance Company presumed to have been discharged shifting the onus to the petitioners since there is nothing in the cross-examination of RW.1 and no evidence is adduced in rebuttal. But, on the other hand, getting the learned counsel for the petitioners that Exs.B-2 and B-3 were

created for the purpose of case to evade payment of compensation is sufficient enough to hold that the motorcyclist, who drove it and caused the accident, did not hold a valid driving license to drive the motorcycle. No other inference can be drawn. Therefore, there is merit in the instant appeal, as it is not a case, where either learner's license is occurring or any other type of license is occurring so as to even order directing the Insurance Company to initially deposit the amount and recover the same from the owner.

16. Therefore, the appeal is allowed, setting aside the order and decree, dated 19-12-2007, in O.P. No.1516 of 2002, passed by the Tribunal against respondent No.2 - M/s. United India Insurance Company Limited, but, however, maintaining it in all other respects so far as respondent No.1 is concerned. No order as to costs.

17. From the record, it is to be found that on 11-02-2009, while granting stay in MACMAMP No.667 of 2009, the appellant herein was directed to deposit half of the decretal amount including interest and costs within a period of six (06) weeks, and later, on 18-03-2013, in MACMAMP No.1148 of 2013, while dismissing the vacate stay petition, permitted the petitioners to withdraw 50% of the deposited amount in equal shares. Therefore, the appellant - Insurance Company herein is at liberty to

recover the amount withdrawn by the petitioners from respondent No.1, owner of the vehicle, and the petitioners are at liberty to recover the balance amount from owner of the vehicle. In case any amount is still in deposit, the appellant is entitled to seek return of the same.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 16, 2016.

Mgr