

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.607 of 2010

JUDGMENT:

The 2nd respondent-insurer, among two respondents including owner of the tractor-trailor bearing Nos.AAB 2297 and AAB 2298, impugning the award of the tribunal dated 02.09.2009 in O.P.No.1926 of 2007, maintained by the wife, two minor children and mother of the deceased, by name, Mohd.Ahmed@ Goremiya, aged about 30 years as per the Post Report Report-Ex.A4 and what PW.1 deposed is about 30 or 31 years, from the contest by the respondents saying the accident was the result of contributory negligence of the deceased, who was proceeding on his motor cycle and dashed the opposite coming tractor-trailor of the 1st respondent, negated by the tribunal in holding that the accident was result of rash and negligent driving of the tractor-trailor of 1st respondent and even it is contested that there is pursuant to the agreement under Ex.B5, the 1st respondent/ owner paid Rs.70,000/- to the claimants that was not given deduction and the other contest by the insurer is that the driver is not having valid driving license for driving light motor vehicle-transport only possessed light motor vehicle-non-transport for awarding compensation of Rs.4,23,000/- with interest at 7.5%p.a. with pay and recovery liability, now impugning the same, the present appeal is filed saying that the tribunal ought to have deducted Rs.70,000/- paid by the owner, for the insurer only to indemnify

the owner what is payable pursuant to the policy in force that too subject to liability for the driver not possessing valid driving license, which is a ground for exoneration that was not properly considered by the tribunal, apart from the quantum of compensation arrived excessive and exorbitant and multiplier taken at '17' is wrong and the correct multiplier is '16' for the persons aged 31 years including from the evidence of PW.1. Hence, to allow the appeal.

2. Whereas, it is the submission of the claimants that the award of the tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere and hence to dismiss the appeal.

3. Heard and perused the material on record.

4. Now, from the manner of accident while proceeding in opposite direction irrespective of the F.I.R and charge sheet against the driver of the tractor-trailor of the 1st respondent, the evidence on record shows contribution by the deceased also including Ex.A6-MVI report and the evidence of RWs.1 to 3 and tribunal ignored the same and having regard to the 20% contribution of the deceased in Municipal Corporation of Greater Bombay vs Laxman Iyer¹ for 80% liability what the tribunal awarded of Rs.70,000/- paid by the owner is liable to be deducted and latest expression in Reliance General Insurance Company

¹ 2003 (8) SCC 731

Limited v. Shashi Sharma², also laid down the said principle what ever the source of amount received by the claimants that is liable to be deducted out of the compensation payable as what is payable is the just compensation and not a bonanza there from.

5. So far as pay and recovery liability and exoneration contention concerned, as per the settled expressions of the Apex Court in National Insurance Company Limited v. Swaran Singh³ reiterated in subsequent expressions in Kusum Lata v. Satbir⁴ and S.Iyyappan v. United India Insurance Company⁵, it is a case for pay and recovery, though the tribunal did not elaborate the pay and recovery directions.

6. Now coming to the quantum, the accident was dated 18.11.2007. As per Lata Wadhwa v. State of Bihar⁶, in the absence of proof of earnings, minimum Rs.3,000/- to be taken into consideration and the accident was about more than six years after the expression, the earnings of the deceased can be taken at Rs.3,600/- p.m. If 1/4th is deducted towards personal expenses of the deceased as dependents are four in number, it comes to Rs.2,700/- p.m. and Rs.32,400/- p.a. and the same is multiplied with the multiplier '16' (applicable from the age of the deceased), it comes to Rs.5,18,400/-. Apart from the same, the claimants are entitled to Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and

² 2016 (9) SCC 627

³ (2004) 3 SCC 297=2004-AJ-1

⁴ AIR 2011 SC 1234

⁵ (2013) 7 SCC 62

⁶ AIR 2001 (SC) 3218

Rs.10,000/- towards care and guidance to the minor children. Thus, the total compensation comes to Rs.6,13,400/- and 80% liability therein comes to Rs.4,90,720/- and even Rs.70,000/- paid by the owner is deducted, it comes to Rs.4,20,720/- and what the tribunal awarded of Rs.4,23,000/- is no way excessive.

7. Accordingly, the appeal is dismissed. The pay and recovery directions are as follows:

The insurer shall deposit said amount within one month from the date of receipt of a copy of this order, failing which the claimant can execute and recover. It is made clear from the settled expressions of the Apex Court in *United India Insurance Co. Ltd. V. Lehu*⁷ and *Oriental Insurance Company Limited Vs. Nanjappan & Others*⁸ that the insurer is entitled, while depositing the amounts payable, if not deposited or paid any amounts so far to deposit the balance amount to approach the tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the Motor Vehicles Act, 1988, and also ask the tribunal not to disburse the deposited amount of the respective claimant (but for to invest in a bank) till such attachment order is made. However, after the same, the tribunal shall not withhold the amounts of the claimant, if there is any necessity to permit for any withdrawals but for to

⁷ JT-2003(2) SC 595 = 2003 ACJ 611

⁸ (2004) 13 SCC 224=2004-SAR(civil)-290

invest the respective balance amounts separately in fixed deposits in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

8. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:30.11.2016
pab

