HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1921 OF 2009

JUDGMENT:

The United India Insurance Company Limited, represented by its Branch Manager, who is respondent No.2 in O.P. No.764 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Medak at Sangareddy (for short, 'the Tribunal'), aggrieved over the order and decree dated 02.01.2009, preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') mainly on the ground that though, the father of the deceased, who is fourth claimant herein, stated in the first information report that the deceased must have died due to accident, but did not give particulars of the offending vehicle, if any, but only two months later, the owner of the auto-rickshaw who is respondent No.1 said to have brought the driver of the auto rickshaw employed by him and surrendered him before the police as the person who while driving the auto negligently drove it and dashed the motorcycle of the deceased, resulting in the death of the deceased, which is totally unreliable.

2. Appellant herein, who is the insurer of the crime vehicle, is respondent No.2, while respondent Nos.1 to 4 herein, who are the wife, minor children and parents of one M.Nagesh (deceased), are the petitioners and respondent No.5 herein, who is owner of the accident

vehicle, is respondent No.1 in the original petition before the Tribunal.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The fact-situation occurring in the instant case would reveal that the petitioners, who are the wife, minor children and parents of the deceased, claiming that the deceased was working as an electrician in M.R.F. factory earning Rs.4,500/- per month and even selected as junior lineman in APCPDCL at Munipally Sub-Station and joined on 10.11.2006, but died two days prior thereto, sought to grant a compensation of Rs.6,80,000/- by laying claim under Section 166 of the Act.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*.

6. Respondent No.2-insurer, initially filed its counter on 08.03.2007 denying the allegations mentioned in the claim petition. In paragraph No.8 of the counter, the insurer sought the petitioners to prove that there was no contributory negligence on the part of the deceased driver of the motorcycle. No tangible defence is forthcoming in that counter. But on 03.12.2008, additional counter was filed stating that as per the F.I.R., the deceased was accused in the

accident and, therefore, the insurer is not liable to pay any compensation and the auto-rickshaw bearing registration No.AP 23V 8446 was not at all involved in the said accident, but respondent No.2 was falsely implicated and taken the plea that the petitioners colluded with respondent No.1 to make a wrongful gain. Again, an additional counter was filed by respondent No.2 taking a plea that as per the driving licence extract issued by the Additional Licensing Authority, Medak, Sangareddy, the driver by name B.Dhanesh had non-transport driving licence upto 10.03.2025, but the accident occurred on 08.08.2006 and, thus, it clearly shows that the driver of the auto-rickshaw was not possessing valid and effective driving licence as the auto-rickshaw was transport passengers vehicle and, therefore, sought to dismiss the claim petition.

7. The Tribunal on the basis of the aforesaid pleadings, framed the following three issues:

> "1. Whether the accident occurred due to rash and negligent driving of the driver of the crime vehicle?
>
> 2. Whether the petitioner is entitled for compensation, if so, what quantum and from whom?
>
> 3. To what relief?"

8. During enquiry, petitioner No.1 besides examining herself as P.W.1 has examined one G.Manikyam as P.W.2 said to be the eyewitness to the occurrence and marked Exs.A.1 to A.11. On

behalf of respondent No.2-insurer, Exs.B.1 and B.2 were marked, which are copies of insurance policy and extract of driving licence. Admittedly, no witnesses were examined on behalf of respondent No.2. On perusal of the exhibit seal on Exs.B.1 and B.2, the entries would show that they were marked on consent.

9. The Tribunal, on issue No.1, mainly basing on the contents of Exs.A.2 and A.3, arrived at the finding that due to rash and negligent driving of the auto driver, the accident did occur. The Tribunal has discarded the stand of the insurer that no accident involving the auto-rickshaw did take place, assigning the reason that respondent No.2-insurer went to the extent of mentioning that the deceased himself was shown as the accused in the F.I.R., though, in fact, that was not the actual fact-situation.

10. On issue No.2, the Tribunal, considering the entries in Ex.A.10 that the deceased was paid Rs.119/- per day as a contract labourer from March, 2004 to July, 2006, and also observing that the claimants failed to produce any one on behalf of M/s. S/R Contractors to prove the contents of Ex.A.10, which is the appointment letter mentioning the salary therein, fixed the monthly income at Rs.3,570/- rounding it off to Rs.3,500/-, applied multiplier '17' by deducting 1/3rd towards personal living expenses of the deceased and capitalized the reminder with the multiplier factor '17' in arriving at Rs.4,76,000/- towards loss of dependency. This apart, the Tribunal

has granted Rs.2,000/- towards funeral expenses, Rs.1,000/- towards transportation, Rs.12,000/- towards loss of consortium and Rs.10,000/- towards love and affection, making a total sum of Rs.5,01,000/- and awarded the same with interest at 7.5% per annum by apportioning the same among petitioner Nos.1 to 4.

11. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal went wrong in recording finding that the auto-rickshaw bearing registration No.AP 23V 8446 was involved in the accident and went wrong in fixing the monthly earnings at Rs.3,500/-, though no officer was examined from APCPDCL and award of interest at 7.5% is on higher side and, therefore, sought to set aside the award and decree.

12. Heard Sri E.Venugopal Reddy, learned Standing Counsel for the appellant-insurer. On behalf of respondent Nos.1 to 4 herein/ claimants, even on behalf of respondent No.5 herein-owner of the accident vehicle, none appears, though, service was completed on them.

13. The points that require determination are, whether the involvement of the auto-rickshaw bearing registration No.AP 23V 8446 is incorrect and the finding tendered by the Tribunal thereon is perverse and whether the monthly earnings taken by the Tribunal at Rs.3,500/- is on higher side and suffers for want of legally acceptable evidence?

14. It is true, the fact-situation occurring in the instant case would reveal that in the F.I.R., lodged by the father of the deceased, no particulars of the opposite vehicle or offending vehicle are mentioned and the complainant mentioned that the death of the deceased had occurred due to the accident, but, however, investigation would reveal that respondent No.1, in fact, produced his driver and surrendered him, of course, after a lapse of about two months, on which, the police arrested him and laid charge sheet showing him as an accused for the offence punishable under Section 304-A IPC. P.W.2 no doubt was examined as an eyewitness to the occurrence and no reasons are assigned as to why he did not lodge complaint with the police having witnessed the accident, but the question is whether on mere suspicion without concrete evidence being let in by the insurer, more particularly, when the plea that the driver of the auto did not possess valid and effective driving licence on the date of the accident, as he was holding only licence to drive non-transport vehicle, but not a transport vehicle being agitated, can the stand of insurer be acceded to.

15. Thus, the learned Standing Counsel for the appellant-insurer canvases two main points. Firstly, as to the involvement of the auto-rickshaw in the accident resulting in the death of the deceased. Second, violation of terms and conditions of the insurance policy as the driver of the auto was not holding valid driving licence to drive the transport vehicle. So far as the first point is concerned, despite the

insurer filing additional counter with the permission of the Tribunal agitating the plea as to the non-involvement of the auto-rickshaw, strangely, did not examine any of its officials from the local branch, more particularly, the investigator to project as to the non-involvement of the auto-rickshaw in his report. No doubt, copy of the insurance policy and the extract of driving licence signed by the RTA authorities were marked on consent given by the learned counsel for the petitioners, but it would not improve the case of the appellant-insurer to get over the finding recorded by the Tribunal as to the involvement of the auto-rickshaw in the accident. In fact, the Tribunal has observed that the insurer went to the extent of projecting that the deceased was shown as the accused in the F.I.R., though, it was not factually correct. Unless the finding recorded by the Tribunal on issue No.1 is shown as patently perverse, in which direction, no witnesses were at all examined by the insurer, more particularly, the material witness being the investigator appointed by it, certainly, that finding recorded by the Tribunal does not warrant interference.

16. Turning to the violation of terms and conditions of the insurance policy complained by the appellant-insurer, in view of the decision of the Hon'ble Supreme Court in **S.Iyyapan v. United India Insurance Company Limited and another**[1], the said stand taken by the appellant-insurer loses its significance, but, however, to the extent

[1] (2013) 7 SCC 62

of directing the insurer to initially deposit the compensation and later recover the same from the owner, the ruling aids the appellant-insurer.

17. Turning to the earnings fixed by the Tribunal at Rs.3,000/- per month, certainly, it cannot be said that the Tribunal arbitrarily fixed the said amount, in the presence of the appointment letter, the deceased would have taken up, the assignment had his death did not invite him two days prior to the date of appointment mentioned in the letter Ex.7. Therefore, it cannot be said that the earnings of the deceased fixed by the Tribunal are without any material evidence on record and therefore, no interference is warranted. In fact, the law laid down by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[2] and **Rajesh and others v. Rajbir Singh and others**[3] is applied, the petitioners would be entitled to 1/4th deduction towards personal living expenses of the deceased and also future prospects. Thus, viewed from any angle, there is no merit in the present appeal.

18. Therefore, the instant appeal is liable to be dismissed, but, however, modifying the order and decree under challenge for the reason that Ex.B.2-extract of driving licence, is marked by the Insurance Company-respondent No.2 on consent being given by the learned counsel for the petitioners, ordering that the Insurance

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[2] (2009) 6 SCC 121
[3] 2013 ACJ 1403

Company-appellant herein shall deposit the compensation amount initially and recover the same from the owner of the vehicle. Accordingly, the order and decree are modified. There shall be no order as to costs.

19. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

DATE : 23-11-2016
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