

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.4271 OF 2004

JUDGMENT:

The instant appeal is preferred by the petitioners challenging the order and decree, dated 09-08-2004, in O.P. No.727 of 2003, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge, Karimnagar (for short 'the Tribunal'), whereby and where-under a sum of Rs.1,68,000/- was granted as compensation against respondent No.1 alone by dismissing the claim against respondent No.2 as against the claim of Rs.3,00,000/- laid under Section 166 (1) (c) of Motor Vehicles Act, 1988 (for short 'the Act') for the death of Ejagiri Padma.

2. The appellants herein, who are husband and children of Ejagiri Padma, are the petitioners, while respondent Nos.1 and 2, who are owner and insurer of auto-rickshaw bearing registration No.AP 15V 5640, respectively, are respondents as such in the OP before the Tribunal.

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

4. The facts are that on 08-08-2003, one Ejjagiri Padma, who is wife of petitioner No.1 and mother of petitioner Nos.2 and 3, was returning from Godavari Pushkaralu in an auto-rickshaw bearing registration No.AP 15V 5640 driven by respondent No.1, who was owner - cum - driver, and when it reached Polasa village, since respondent No.1 drove it in a rash and negligent manner at high speed and in order to avoid a vehicle coming in opposite direction, he jumped out of the auto-rickshaw resulting in its hitting a tree, due to which, she sustained head injury and while she was being shifted to Government Hospital, Jagtial, she succumbed to injuries. The petitioners, claiming that the deceased was earning Rs.70/- per day and contributing the amount for the maintenance of the family, sought a sum of Rs.3,00,000/- as compensation from respondent Nos.1 and 2, who are owner-cum-driver and insurer of the vehicle respectively.

5. Respondent No.1 filed written statement, stating that he was possessing a valid driving license up to 20-01-2015 having obtained it vide No.4542/97, dated 25-07-1997 and that the vehicle involved in the accident was insured with the respondent No.2 and, therefore, the petitioners are entitled to recover the compensation from respondent No.2.

6. Respondent No.2 - Insurance Company has filed

separate counter opposing the claim. It has taken a specific plea that respondent No.1 did not possess a valid driving license on the date of accident, and the particulars of the insurance policy furnished by him were insufficient to trace the insurance policy for the accident vehicle. Thus, it has put forth the plea of violation of terms and conditions of the policy and thereby sought to exonerate it. While seeking protection under Sections 147 and 149 of the Act, and to take defences under section 170 of the Act, it sought to dismiss the claim petition.

7. Basing of the said pleadings, the Tribunal framed the following three issues:

- “1. Whether the accident took place due to rash and negligent driving of Auto No.AP-15-V-5640 by its driver?
2. Whether the petitioners are entitled to compensation, if so, to what amount and from whom?
3. To what relief? ”

8. During inquiry before the Tribunal, petitioner No.1 examined himself as PW.1, besides examining one Abbidi Gali Reddy as PW.2 and marked Exs.A-1 to A-6. On behalf of respondent No.2, one S. Punithavathi was examined as RW.1 and marked Exs.B-1 and B-2, which are attested copy of insurance policy in respect of the vehicle and extract of driving license issued by Additional Licensing Authority, Karimnagar, respectively.

9. Heard Sri V. Ravi Kiran Rao, learned counsel for the appellants - petitioners, and Ms. S.A.V. Ratnam, learned counsel for respondent No.2 - Insurance Company. Despite service of notice on respondent No.1, none appears for him.

10. Perused the order and the evidence on record. The Tribunal has recorded the finding that respondent No.1 did not possess a valid driving license to drive the auto-rickshaw on the date of accident and he was, therefore, charged under Section 3 read with 181 of the Act, and even according to Ex.B-2, respondent No.1 did not possess valid driving license on the date of accident and due to his rash and negligent driving, the accident had occurred and, therefore, respondent No.1 alone is liable, but not respondent No.2 and, thus, tendered the finding on issue No.2. For recording such a finding, the Tribunal observed in paragraph No.'26' thus:

"26. After the petitioners' evidence is closed, the learned counsel for the respondent No.1 reported no evidence on 13.7.2004. To that effect an endorsement is made on the docket. Subsequently, he filed a petition in IA No.1135 of 2004, but the same is dismissed, because he filed the petition after RW1 is examined and produced Ex.B2 that the first respondent did not possess valid driving licence for driving an Auto at the time of accident."

11. Certain details are wanting while narrating the aforesaid contents. It is not known whether I.A. No.1135 of 2004 was filed by the insurer to summon any witness from Road Transport Authority to prove Ex.B-2. It appears that the said order was not challenged. But, during the course of arguments, a notarized copy of license was sought to be placed on record by the appellants to show that respondent No.1 possessed non-transport LMV-MCWG and transport AR,LMV, which was issued on 25-07-1997 valid till 20-01-2016 so far as LMV, MCWG is concerned, and till 23-07-2007 concerning AR, LMV. The necessary details can only be gathered in case original license is filed into Court and relevant witness is examined by the petitioners by summoning an official from concerned department. Like-wise, it is also open to the Insurance Company to summon and examine witnesses to substantiate its stand. It is not clear from the observations made by the Tribunal and the evidence on record that on the date of accident, whether the deceased did possess transport LMV license. Ex.B-2 filed by the insurer requires to be proved through examination of the relevant witness from the concerned authority. For these reasons, it is just and reasonable to remit the matter to the Tribunal.

12. Accordingly, the appeal is allowed setting aside

the order and decree, dated 09-08-2004, in O.P. No.727 of 2003, passed by the Tribunal, and the matter is remanded to the Tribunal with a direction to dispose of the matter within six (06) months from the date of receipt of a copy of the judgment since the accident relates to the year 2003 and the claim petition relates to the year 2004. Further, both sides are at liberty to lead further evidence touching the license held by the deceased at the time when the accident had taken place. The order passed by the Tribunal in I.A. No.1135 of 2004 will not disentitle the parties herein to lead further evidence on Ex.B-2, and the petitioners to file the original license held by the deceased along with renewals, if any, in order to enable the Tribunal to arrive at a correct conclusion. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

July 04, 2016.

Mgr

