

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.193 of 2005

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by respondent No.2 – New India Assurance Company Limited, aggrieved by the order and decree dated 01.07.2004 in O.P.No.275 of 2000 passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge (FTC), Adilabad District (for brevity “the Tribunal”), whereby and whereunder a sum of Rs.70,000/- was awarded towards compensation with interest at 9% per annum from the date of petition till realization, as against the claim of Rs.1,00,000/- made under Sections 166 (1)(c) and 163(A) of the Motor Vehicles Act, 1988 by respondent Nos.1 and 2/petitioners, who are parents of the deceased girl, namely M. Laxmi @ D. Laxmi, aged 6 years, who died in a road accident.

2. The appellant herein is respondent No.2, and respondent Nos.1 and 2 are petitioners, and respondent No.3 is respondent No.1 in O.P.No.275 of 2000.

3. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in O.P.No.275 of 2000 before the Tribunal.

4. The facts, in brief, are that the petitioners are residents of Godiserala village of Kadam Mandal, Adilabad District, that the 1st petitioner along with his family went to Metpalli of Karimnagar

District for livelihood, that on 24.06.1999 at about 5-00 a.m., during his absence from the house, the Jeep bearing No.AAP 2627 belonging to the 1st respondent and insured with the 2nd respondent-Insurance Company, which was driven by its driver in a rash and negligent manner, dashed against the deceased girl, occasioning her instant death. The S.H.O., Metpalli P.S. of Karimnagar District also registered a case in Crime No.101 of 1999 under Section 304-A IPC against the driver of the offending Jeep. The petitioners, who are parents of the deceased girl, made a claim for a compensation of Rs.1,00,000/- for the death of the deceased girl against respondent Nos.1 and 2, who are owner and insurer, respectively, of the offending Jeep.

5. The 1st respondent-owner of the Jeep remained exparte and the 2nd respondent-insurer filed counter opposing the claim raising a specific plea that there was collusion between the 1st respondent and the petitioners and that the driver of the offending Jeep, had no valid and subsisting driving licence and thereby sought to dismiss the claim against it.

6. Basing on the pleadings, the following issues were framed for trial.

- (1) Whether the deceased viz., M. Laxmi died in the accident occurred on 24.06.1999 due to rash and negligent driving of Jeep No.AAP 2627 by its driver?
- (2) Whether the petitioners are entitled to any compensation? If so to what amount and against whom?

(3) To what relief?

7. During enquiry, the 1st petitioner, who is the father of the deceased, was examined as P.W.1, besides examining one R. Pocham, an eye witness to the incident, as P.W.2, and got marked Exs.A.1 to A.5. On behalf of the respondents, none were examined, except marking Exs.B-1 and B-2, which are attested copies of MVI Report and Charge Sheet, respectively, on mutual consent.

8. On appraisal of evidence on record, on Issue No.1, the Tribunal had recorded a finding in favour of the petitioners holding that due to the rash and negligent driving by the driver of the offending Jeep, the accident had occurred. On issue No.2, the Tribunal, by order dated 01.07.2004, had determined a sum of Rs.70,000/- towards compensation quantifying the same under various heads, with interest @ 9% per annum from the date of petition till realization.

9. The aforesaid order is under challenge in the instant appeal preferred by the 2nd respondent-New India Assurance Company Limited, contending in the grounds of appeal that the Tribunal has not dealt with the plea taken by the insurer that the driver of the offending Jeep was not having a valid and subsisting driving licence as on the date of accident and no specific issue was framed to that effect and hence sought to set aside the impugned order.

10. Heard Smt. I. Maamu Vani, learned Standing counsel for the

appellant-Insurance Company. Though, respondent Nos.1 and 2/petitioners were served notice, none appeared for them and there is an endorsement that the appeal is dismissed against respondent No.3 – owner of the offending Jeep.

11. Be that as it may, to adjudicate upon the controversy herein, unless there is an issue framed as regards whether the driver of the offending Jeep was possessing a valid and subsisting driving licence as on the date of accident and a finding is recorded by the Tribunal to that effect, it is difficult, at the stage of appeal, to tender any finding basing on Exs.B-1 and B-2, which are attested copies of MVI Report and Charge Sheet, respectively, for the reason that the 2nd respondent-Insurance Company has not chosen to file the certified copy of the judgment in calendar case to show whether the driver of the offending Jeep, who was shown as an accused, was convicted and sentenced for not possessing a valid driving licence, though charge was leveled in that regard, as can be gathered from Ex.B-2 charge sheet. Further, the 2nd respondent-Insurance Company has not examined any person from the Road Transport Authority, atleast to prove that the driver of the offending Jeep did not possess a valid and subsisting driving licence as on the date of accident.

12. In that view of the matter, it is a fit case that the instant appeal has to be remanded to the Tribunal for deciding the issue, whether the driver of the Jeep bearing No.AAP 2627 did possess valid and effective driving licence on the date of accident, by affording an opportunity to both the parties to lead evidence. Since

the claim relates to the year 2000, the Tribunal is directed to dispose of the matter within a period of six months from the date of receipt of a copy of this judgment.

13. Subject to the above directions, the Civil Miscellaneous Appeal is disposed of. No order as to costs.

14. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

09.02.2016.

Msr

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