THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.851 OF 2009

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by respondent No.2 - M/s. New India Assurance Company Limited in O.P.No.467 of 2006, on the file of the Chairman, Motor Accident Claims Tribunal - cum - Principal District Judge, Medak at Sanga Reddy (for short 'the Tribunal'), assailing the order and decree, dated 31.10.2008, passed in the said O.P., whereby and where-under, a compensation of Rs.4,00,692/- was granted with interest at 7.5% per annum thereon as against the claim of Rs.6,00,000/- laid under Section 166 of the Act for the death of one Kardas Narsappa, seeking to set aside the direction to initially deposit and recover the compensation amount.

2. Respondent No.6 and the appellant herein, who are owner and insurer of motorcycle bearing registration No.AP 12D 362, respectively, are respondent Nos.1 and 2, respectively, while respondent Nos.1 to 5 herein, who are wife and children of Kardas Narsappa, are petitioners in the original petition before the Tribunal.

3. For the sake of convenience, the parties herein are hereinafter referred to as they were arrayed in the OP.

4. The facts, in brief, would show that, on 08.03.2006, while one Kardas Narsappa, the husband of petitioner No.1 and incidentally the father of petitioner Nos.2 to 5, was proceeding to his agricultural fields

on his bicycle and when he reached Praja Nilayam Church situate in the limits of Zaheerabad on National High Way No.9, at about 5.45 p.m., a Suzuki Samurai motorcycle bearing No. AP 12 D 362 coming from opposite direction driven in a rash and negligent manner at high-speed, hit the bicycle, due to which, he received injuries and went into coma. He was immediately shifted to Government Hospital, Zaheerabad, and from there, he was referred to NIMS Hospital, and then to Yashoda Hospital, Somajiguda, Hyderabad, where he succumbed to injuries on 20.03.2006, while undergoing treatment.

i) Claiming that the deceased was earning Rs.15,000/- per month by running Kirana business and due to the accident, they lost their bread-earner, the petitioners sought Rs.6,00,000/- as compensation against respondent Nos.1 and 2, being owner and insurer of the vehicle respectively.

5. Respondent Nos.1 and 2 opposed the claim by filing separate counter affidavits raising various pleas.

6. The Tribunal, basing on the pleadings of the parties, framed three issues.

7. During inquiry, petitioner No.1 examined herself as P.W.1, besides examining an eyewitness as P.W.2 and Dr. B.S.V.Raju as P.W.3 and marked Exs.A1 to A11. On behalf of the respondents, RWs.1 and 2 were examined and marked Exs.B1 to B4.

8. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of the petitioners holding that due to rash and negligent driving of the rider of the motorcycle, the accident had occurred.

i) On issue No.2, the Tribunal, having deliberated on the evidence of both parties, more particularly, evidence of P.Ws.1 & 3 and R.Ws.1 & 2 and looking at the contents of Exs.A7 to A10 and Ex.B3, taken the income of the deceased as Rs.1,00,000/- per annum, made 1/3rd deduction and applied multiplier '3.44', considering the age of the deceased as 56 years and arrived at Rs.2,29,331/- towards loss of dependency. Besides the said amount, the Tribunal also granted Rs.1,71,361/- towards medical expenses and, thus, the Tribunal granted a total sum of Rs.4,00,692/- with interest at 7.5% per annum from the date of petition till realization.

ii). The Tribunal has recorded a definite finding that the driver of the accident vehicle, which is a motor cycle, was not holding any license at all on the date of accident, which took place on 08.03.2006, and the license filed by him marked as Ex.B1 was obtained on 10.09.2008, that too, to drive a Light Motor Vehicle. So, observing that the said license does not permit the driver to drive the motorcycle still, rejected the stand of the insurance company. But, however, having determined the compensation at Rs.4,00,692/-, gave a direction to respondent No.2 - Insurance Company to deposit the amount initially and recover the same from respondent No.1, owner of the crime vehicle.

9. The aforesaid part of the order and decree is now under challenge in the instant appeal.

11. Heard Sri T.Ramulu, learned standing counsel for the appellant - respondent No.2, and Sri Srinivas Rao Korrapati, learned counsel for respondent No.1 - respondent No.6 herein, the owner of the crime vehicle. No representation for respondent Nos.1 to 5 - petitioners.

12. Perused the order and the material on record, both, oral and documentary, let in by the parties.

13. There is no dispute in regard to the manner in which the accident had taken place and the death of the deceased, who happened to be the husband of petitioner No.1 and father of petitioner Nos.2 to 5, and the entitlement of the petitioners for compensation, which was determined, as mentioned above, with interest at 7.5% per annum.

14. During the course of arguments, the learned standing counsel would submit that the law declared by the Hon'ble Supreme Court in **Sardari v. Susheel Kumar**[1] would clinch the issue to the effect that the insurance company, in a situation as the one occurring in the instant case, is not liable to pay compensation, as it was not under any obligation to indemnify the insured and omission to hold valid and effective driving license on the date of accident would amount to a fundamental violation of the terms and conditions of the policy.

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[1] 2008 ACJ 1307

15. The learned counsel for respondent No.6 herein, who is the owner of the accident vehicle, fairly concedes the submission made by learned counsel for the appellant.

16. On facts also, it is very clear that almost two years after the date of accident, the license was obtained, which indicates that on the date of accident, there was no license at all obtained by the driver of the accident vehicle.

17. The learned standing counsel appearing for the appellant besides placing reliance in **Sardari's Case** (Supra 1), also placed reliance on the decision submitted by the learned counsel for the petitioners in **Oriental Insurance Company v. Zaharulnisha and others**[2] and would submit that the Hon'ble Supreme Court exercising powers under Article 142 of the Constitution of India, directed the Insurance Company to satisfy the award and to recover the amount with interest from the owner of vehicle, and that such power is not vested in this Court and, therefore, the Tribunal was not right in giving such a direction to the Insurance Company to initially deposit the amount and recover the same from the owner.

18. The learned counsel for respondent Nos.1 to 5 - petitioners before the Tribunal while placing reliance on the decision in **Zaharulnisha's Case** (Supra 2), also placed reliance on the decision rendered by this Court in **New India Assurance Company Limited, Tirupati, v. G. Sampoorna & Others**[3] and two other judgments of this

2. (2008) 12 SCC 385
3 2010 (5) ALT 105

Court rendered by a Single Judge, in support of his submission that a direction of this nature which the Tribunal has given can sustain and has to be maintained.

19. When the Hon'ble Supreme Court while exercising power under Article 142 of the Constitution of India issued a direction, certainly, such power is not available to the High Courts, in which case, the decision in **Zaharulnisha's Case** (Supra 2) is of no avail to advance the case of the petitioners. On the other hand, it suits the fact-situation occurring herein and completely supports the argument advanced by the learned standing counsel. The fact-situation therein would reflect that the accident was caused with a scooter resulting in grievous injuries and the ultimate death of the victim. The driver of the scooter was possessing license for driving the heavy motor vehicle and not for two-wheeler. In such fact-situation, the Hon'ble Supreme Court while holding that the driver violated the provisions of Section 10 (2) of the Act, further held that the appellant - insurance company had defense under Section 149 (2) (a) to avoid its liability, but, however, exercising power under Article 142, given a direction to the Insurance Company to satisfy award and to recover the amount. Thus, the decision in **Zaharulnisha's Case** (Supra 2) has a direct bearing on the fact-situation occurring in the present case. Therefore, the direction given by the Tribunal to the effect that the appellant - respondent No.2 to initially deposit and recover the same from the owner of the vehicle cannot be sustained.

20. Hence, the appeal is allowed setting aside the order and decree passed by the Tribunal fastening the initial liability on the Insurance Company - respondent No.2, to pay the compensation amount and to realize the same from respondent No.1, owner of the crime vehicle, however, the order and decree, in all other respects, are confirmed, so far as the liability of the owner of the vehicle, who is respondent No.1 is concerned. No order as to costs.

21. It is submitted by the learned standing counsel that the appellant has deposited half of the decretal amount with interest and costs as per the order, dated 19-03-2009 in MACMAMP No.1486 of 2009. The learned counsel for respondent Nos.1 to 5 would submit that pursuant to the orders, dated 27-07-2009 passed in MACMAMP No.3034 of 2009, permitted the petitioners to withdraw Rs.1,00,000/- with proportionate costs and interest without furnishing any security and the said amount was withdrawn. In such a situation, it would be reasonable to direct the Insurance Company also to recover the said amount withdrawn by the petitioners from the owner of the vehicle, while the petitioners are also at liberty to recover the balance compensation amount from the owner of the vehicle.

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

A. SHANKAR NARAYANA, J

August 29, 2016.
Mgr