HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1137 OF 2009

JUDGMENT:

Respondent No.2 - M/s. New India Assurance Company Limited, represented by its Divisional Manager, Hyderabad, assailing the order and decree, dated 07-12-2007, in O.P. No.888 of 2006, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - V Additional Metropolitan Sessions Judge (Mahila Court) - cum - XIX Additional Chief Judge, City Criminal Courts, Hyderabad (for short 'Tribunal'), preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), on the ground that liability ought not to have fixed on it for violation of the terms and conditions of the policy, as valid driving license was not held by the driver of the accident vehicle.

2. The respondent No.2 and the appellant herein, who are owner and insurer of the auto-rickshaw bearing registration No.AP 28W 1768, respectively, are respondent Nos.1 and 2, respectively, while respondent Nos.1 to 7, who are wife, children and mother of Komire Mogulaiayh, are the petitioners in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the

Tribunal.

4. The facts, in brief, are that on 20-03-2006, one Komire Mogulaiah, who is the husband of petitioner No.1 and father of petitioner Nos.2 to 6 and incidentally son of petitioner No.7, was travelling in an auto-rickshaw bearing registration No.AP 28W 1768 from Kondapur to Tandoor and when it reached the limits of Bheemla Naik Tanda, since its driver drove it in a rash and negligent manner at high speed, lost control over the vehicle, due to which, it went off the road to the right side and fell into a ditch occasioning injuries to the inmates of the auto-rickshaw and the death of the said K. Mogulaiah.

i) The petitioners claiming that the deceased was earning Rs.5,000/- per month as a stone cutter and on account of his death, they lost bread earner, sought a sum of Rs.6,00,000/- as compensation under Section 166 of the Act.

5. Respondent No.1, owner of the auto-rickshaw, remained *ex parte* before the Tribunal.

6. Respondent No.2 - insurer, filed counter mainly contending that the driving license held by the auto-rickshaw driver at the relevant time was not valid and, therefore, sought to dismiss the claim petition against it.

7. The Tribunal has framed the following three

issues basing on the pleadings put-forth by the respective parties.

" (1). Whether the deceased Komire Mogulaiah, age 36 years, died in a Motor Accident, which occurred on 20-3-2006, due to the rash and negligent driving of the driver of the auto bearing No:AP.28-W-1768

(2). Whether the petitioners are entitled for compensation. If so to what amount and from whom.

(3). To what relief."

8. During inquiry before the Tribunal, petitioner No.1 examined herself as PW.1 and marked Exs.A-1 to A-6, besides
Ex.X-1 - receipt for the fine paid by the accused. On behalf of the respondent No.2 - insurer, RWs.1 to 3 were examined and Exs.B-1 and B-2, which are copies of policy and acknowledgment of postal cover, respectively, were marked.

9. The Tribunal, on issue No.1, on appraisal of evidence, recorded a finding that due to rash and negligent driving of the driver of the auto-rickshaw, the accident has occurred.

10. On issue No.2, initially, the Tribunal assessed the compensation by taking the monthly income at Rs.2,500/-, deducting 1/3rd there-from towards personal expenses of the deceased and the remainder Rs.1,667/- per month or Rs.20,004/- per annum towards contribution. Applying multiplier '15' as the deceased was

36 years old, arrived at Rs.3,00,060/- towards loss of dependency. Besides the same, the Tribunal has granted Rs.15,000/- towards loss of consortium; Rs.5,000/- each to the petitioner Nos.2 to 7 towards love and affection, making a total of Rs.3,45,000/-.

i) Having determined the compensation to which the petitioners are entitled, the Tribunal proceeded with excluding the resistance offered by the Insurance Company that the driver of the auto-rickshaw was not holding valid driving license at the time when the accident had taken place, in the light of the evidence of RWs.1 to 3, amongst whom, RW.1, the Assistant Manager of respondent No.2, RW.2, the Head Constable of Tandoor Police Station and RW.3, the Sub-Inspector of Police. The Tribunal rejecting their evidence, disbelieved the stand of the Insurance Company that the driver was not holding valid driving license, and thereby fixed joint and several liability on both the respondents to pay the compensation with interest at 7% per annum.

11. The aforesaid order has been under challenge in the instant appeal preferred by the Insurance Company, mainly contending that the Tribunal ought not to have excluded the evidence of RW.3, who himself deposed that the driver of the auto-rickshaw was not holding valid driving license and paid fine also, and that itself is sufficient to prove and uphold the stand of the Insurance

Company.

12. That has been the only point agitated in the grounds of appeal which requires some sort of deliberation in the light of the evidence of RWs.1 to 3 and the finding recorded by the Tribunal.

13. Heard Sri Sriman, learned standing counsel for the appellant - respondent No.2, Sri Padala Gopaladas, learned counsel for respondent Nos.1 to 7 - petitioners, and Sri Syed Abdul Kareem, learned counsel for respondent No.8 - respondent No.1.

14. Perused the order and the material on record, both, oral and documentary. Certain dates are relevant in present context. The accident had taken place on 20-03-2006. Ex.X-1, which is receipt filed by RW.3 to show that the driver of the auto-rickshaw paid Rs.300/- towards compounding fee for not holding driving license, is dated 25-09-2007. For three reasons, the stand taken by the Insurance Company has to be disbelieved. Firstly, the omission to hold driving license, which amounts to contravening the relevant provision of law, was not shown in the first information report, nor in the charge sheet, which is categorically admitted by RW.3. Second, the amount of Rs.300/- under Ex.X-1 was said to have paid subsequent to filing of the charge sheet as spoken to by RW.3. In fact, when an offence punishable under Section

304A IPC is levelled against a person, certainly, the other ancillary offence would also be clutched including the offence for violation of any of the provisions of Motor Vehicles Act. Strangely, the omission to hold license was not levelled either in the first information report or in the charge sheet. Third, the evidence of RW.3 shows that the amount of Rs.300/- was collected at the spot immediately after the vehicle was intercepted. When the date of accident is seen in the present case, it was on 20-03-2006, the incident occurred, whereas, Ex.X-1 reflects the date as 25-09-2007. Thus, the said circumstance itself is sufficient enough to disbelieve the stand of the Insurance Company.

15. A perusal of Ex.X-1 would show that the vehicle number recorded as AP 28W 1768, and the violation is shown as an offence under Section 181 of the Act. So far as the date on which the said violation said to have occurred is not mentioned including the time, except the date of collection of the amount. In such an event, certainly, it has to be held that Ex.X-1 would not prove the case of the 2nd respondent. Further, the 2nd respondent has not chosen to examine the relevant officials from the Road Transport Authority to speak as to whether the auto-rickshaw driver did hold any driving license at all or not. Thus, there is no merit in the instant appeal.

16. Therefore, the appeal is dismissed confirming the order and decree, dated 07-12-2007, in O.P. No.888 of 2006, passed by the Tribunal in all respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

July 29, 2016.

Mgr