HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.175 of 2010

JUDGMENT:

The 2nd respondent—insurer among two respondents including owner of Bajaj Chetak scooter bearing No.AP 31J 8795, maintained the present appeal impugning the award dated 29.02.2008 passed in M.V.O.P. No.152 of 2005 on the file of Motor Vehicles Accidents Claims Tribunal-cum-VII Additional District Judge, Kakinada (for short 'the Tribunal') under Section 163-A of the Motor Vehicle Act, 1988 (for short 'M.V. Act') by four claimants, who are none other than wife, major sons and married daughter of deceased Pappala Pothuraju Naidu, aged about 65 years as per Ex.A2—post mortem report, for compensation of Rs.80,000/-, with averments that on 13.10.2004 while the deceased was riding Bajaj Chetak of 1st respondent, he himself lost control due to uneven condition of the road, sustained injuries and immediately he was shifted to Apollo Hospital, Kakinada and on the very next day while undergoing treating he died. Police Indrapalem registered a case in Crime No.150 of 2004. The 2nd respondent—insurer from 1st respondent—owner remained *ex parte* with contest opposed the claim saying the deceased himself was responsible for the accident and as such the claimants are not entitled to compensation, which risk for not covered by the policy and there is no employer and employee relationship even under Workmen Compensation Act and thereby the insurer is not liable for compensation.

2) The Tribunal held from the evidence on record of PWs.1 and 2, RW.1 and Exs.A1 to A3 and Ex.B1 that the accident occurred while riding the scooter by the deceased that belongs to 1st respondent undisputedly and, coming to the entitlement of compensation and

indemnifying the insurer are concerned, Ex.B1 policy speaks Rs.50/- paid to cover the risk of owner—driver as per RW.1's evidence and the owner-driver described in Ex.B1—policy as "a) the owner—driver is registered owner of the vehicle insured herein; b) the owner—driver is the insured named in this policy; c) the owner—driver holds an effective driving licence, in accordance with the provisions of Rule 3 of the Central Motor Vehicle Rules, 1989 at the time of accident." Ex.B1—policy further speaks that any person including insured mentioned as provided that a person driving holds an effective driving license at the time of accident and is not disqualified from holding or obtaining such a license. Provided also that a person holding an effective learner's license may also drive the vehicle and that such a person satisfies the requirements of Rule-3 of the Central Motor Vehicles Rules, 1989.

3) A perusal of Rule 3 speaks Licensing of Drivers of Motor Vehicles in general on passing of the test of competency to issue medical fitness with reference to fitness certificate, correct address and age, academic qualifications prescribed to be need etc., and Rule 10 of the Rules speaks of application for learner's licence evidence. Rule 15 speaks of driving test that no person shall appear for the test of competence to drive, unless he has held a learner's licence for a period of at least thirty days. Rule 16 speaks every driving licence be issued or renewed by the licensing authority. Rule 17 speaks that in addition to driving licence, an application for addition of another class or description of motor vehicle to the driving licence shall be made in Form 8 to the licensing authority and Rule 18 speaks of renewal of such driving licence. Rule 21 speaks of powers of licensing authority to disqualify even licence already granted.

4) The Tribunal referring to the same observed that once there is no dispute of the deceased was having valid driving licence in riding the scooter at the time of accident, he is even not accepted as employee working under the 1st respondent—owner, the above clause covers the risk of any other person including in the meaning of insured, with a licence while driving at the time of accident to cover the risk in awarding said compensation of Rs.80,000/- as prayed for with interest at 7.5% per annum. It is now impugned in the appeal.

5) The grounds of appeal vis-à-vis oral submissions are that the Tribunal gravely erred in so holding despite deceased was not the owner within the meaning of Section 2 (30) of the M.V Act. What the policy covered is owner—driver to say registered owner or owner—driver to say insured by entering his name in the policy and not any other person even allowed by owner to ride the bike for not such a comprehensive policy to cover any such risk and thereby, the appeal is to be allowed exonerating the insurer from liability.

6) Whereas it is the submission of the learned counsel for the claimants that the award of the Tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere and prayed to dismiss the appeal.

7) Heard both sides and perused the material on record.

8) In fact, this Court while admitting the appeal and granting stay on 13.07.2009 in M.A.C.M.A. M.P. No.3741 of 2009 permitted the petitioner to deposit half of the amount awarded by the Tribunal together with proportionate costs and interest and on such deposit, permitting the claimants to withdraw their respective shares without furnishing any

security but for of the minors to be kept in fixed deposit till they attain the age of majority as a *custodia-legis*.

9) The important issue that falls for consideration in this appeal is the deceased whether within the meaning of third party or within the meaning of owner—driver by stepping into the shoes of the owner. Section 2 (30) of the M.V Act given interpretation including by the Constitution Bench expressions of the Apex Court in giving elasticity to the meaning of the owner and it reads ‘owner’ means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;

10) In this context, one has to go by the terms of the Indian Contract Act. What is meant by agreement under Section 10 of the Indian Contract Act, 1872 speaks all agreements are contracts, if they are made by the free consent of parties, who are competent to contract as defined in Section 11 of the Act saying major according to law, who is of sound mind and not disqualified from contracting by any law to which he is subject (the Motor Vehicles Act no way disqualifies to enter into agreement by the deceased with the registered owner—1st respondent) and for a lawful consideration with a lawful object, and for not hereby expressly declared as void. The award speaks the deceased was shown in employment under the owner and there is no any specific denial in this regard from the material.

Section 2 (h) of the Indian Contract Act speaks an agreement enforceable by law is a contract. Section 2 (d) speaks that at the desire of the promissor, the promisee or any other person has done or abstains from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

Section 2 (e) of the Indian Contract Act speaks, every promise and every set of promises, forming the consideration for each other, is an agreement.

Section 2 (g) of the Indian Contract Act speaks, an agreement not enforceable by law is said to be void.

11) Once the deceased was an employee and the giving of vehicle is not a gratituous and the services rendered by the deceased as employee under the owner itself is within the meaning of the consideration defined under Section 2 of the Indian Contract Act read with Section 10 of the Indian Contract Act to say there is consideration and there is a lawful contract enforceable by law. Here from this definition of the agreement under the Contract Act, now coming to the wording of owner under Section 2 (30) of the M.V Act, owner means in relation to the motor vehicle which is subject of agreement in possession. The person in possession of the vehicle under the agreement, thereby it specifies the meaning of the owner.

12) Further the policy covers the risk in three contingencies mentioned as clause (a) to (c) of which clause (a) speaks of registered owner-driver of the vehicle insured, (b) speaks of owner-driver is the insured named in the policy, (c) speaks of owner-driver holds effective driving licence, in accordance with Rule 3 of Central M.V. Rules, 1989 at the time of accident.

13) From the above, the deceased is within the meaning of owner—driver or not now falls for consideration.

14) From the reading of Section 2 read with Section 10 of the Indian Contract Act read with Section 2 (3) of the M.V Act, it specifies the requirement so also to say clause (c) covers owner—driver within the comprehensive meaning of not only the registered owner or the insured owner but also entrusted owner by the registered owner/ insured owner that is the conclusion in specific terms once arrived at by the Tribunal in fixing liability invoking Section 168 of M.V Act, for this Court while sitting in appeal there is nothing to come to a different conclusion from what is discussed supra. It is also for the reason that the deceased either by stepping into the shoes of the owner must be a owner, if it is within the meaning of extended meaning of owner as discussed supra, the policy covers the risk. If he is not within the extended meaning of owner, once he is a third party, Act policy itself covers the risk for no need of any contractual undertaking of any liability invoking proviso (2) of Section 147 of M.V Act. The policy covers the risk from undertaking from the owner—driver and the vehicle entrusted by the registered owner—insured owner to the deceased person as an employee under him to consider within the meaning of owner—driver and the appeal is liable to be dismissed.

15) No doubt, from what is discussed supra, deceased comes within the meaning of owner—driver and the policy covers the risk of PA claim upto Rs.1,00,000/-, as a third party invoking M.V Act again does not arise but for to say instead of dismissing the appeal, set-aside the award of the Tribunal and directing to make a claim for Rs.1,00,000/- covered by the policy from confirming what the Tribunal awarded of

Rs.80,000/-. However, the amount payable shall not exceed Rs.1,00,000/- as on today including with interest and costs but for the interest at 7.5% per annum from today on Rs.1,00,000/-.

16) Accordingly and in the result, to that extent the appeal is allowed in part by modifying the award on the quantum of Rs.80,000/- with interest at 7.5% per annum from its claim petition and the said amount shall not exceed the limit of Rs.1,00,000/- covered by the policy since policy covers only personal accident claim and for personal accident claim, the claim under M.V Act is not sustainable but for the Court to observe that instead of so driving for otherwise entitlement, thereby, from what is discussed supra, to pay the said amount of Rs.1,00,000/- with interest at 7.5% per annum from today till payment for executing after deducting what is the amount so far paid and withdrawn, for the balance to pay and it is made clear that for the amount paid so far or deposited, calculation of interest does not arise. No order as to costs.

17) Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.17.11.2016
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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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