

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2036 OF 2009

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by respondent No.3 - M/s. ICICI Lombard General Insurance Company Limited in O.P. No.697 of 2007, on the file of the Chairman, Motor Accident Claims Tribunal - cum - District Judge, West Godavari District at Eluru (for short 'the Tribunal'), challenging the liability fastened on it, by the order and decree, dated 10-07-2008, whereby and where-under, a sum of Rs.4,60,200/- was awarded as compensation with interest at 7.5% per annum thereon as against the claim of Rs.5,00,000/- laid by the petitioners under Section 166 of the Act against respondent Nos.1 to 3 by dismissing the claim against respondent Nos.4 and 5.

2. Respondent Nos.6, 7 and the appellant herein, who are driver, owner and insurer of Tata Mobile Car bearing registration No.AP 37W 9390, respectively, are respondent Nos.1 to 3, respectively, while respondent Nos.1 to 5 are the petitioners and respondent Nos.8 and 9, who are owner and insurer of Hero Honda Motorcycle bearing registration No.AP 27J 3417 respectively, are respondent Nos.4 and 5, respectively, in OP before the Tribunal.

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

4. The facts, in brief, are that on 17-06-2007, one Sammakayala Gowri Sankar was proceeding on his Hero Honda Motorcycle from his house at Lankapet, Tangellamudi, Eluru towards his father-in-law, and when he reached opposite Eedpuganti Venkateswara Rao Tope in Gundigunta, outskirts of Gangannagudem of Denduluru Mandal at about 6.00 a.m., a Tata Mobile Car bearing registration No.AP 37W 9390 driven by respondent No.1 belonging to respondent No.2 and insured with respondent No.3 came from Munduru in a rash and negligent manner at high speed and hit him, due to which, he fell down and died instantly. Claiming that the deceased was running a tailoring shop, getting Rs.3,500/- per month besides working as Clerk in a cloth stores, getting Rs.1,000/- per month, and that they lost their bread-earner, the petitioners being wife, children and parents of the deceased, laid the claim seeking Rs.5,00,000/- as compensation against respondent Nos.1 to 5 of which respondent Nos.4 and 5 are pro forma parties.

5. Respondent No.4, owner of the motorcycle, remained *ex parte*. Respondent Nos.1 and 2, who are driver and owner of the car filed written statement opposing the claim. Respondent No.3, insurer of the car, also filed separate written statement opposing the claim. Respondent No.5, insurer of the motorcycle, filed written statement denying the claim.

6. The Tribunal having framed three issues, examined PWs.1 and 2 and marked Exs.A-1 to A-7 and also Ex.X-1 on behalf of the petitioners, whereas RWs.1 and 2 were examined and Exs.B-1 and B-2 were marked on behalf of respondents.

7. The Tribunal having analyzed the evidence on record, both, oral and documentary, held issue No.1 in favour of the petitioners, holding that the accident had occurred due to rash and negligent driving of the car driver - respondent No.1; on issue No.2, the Tribunal taking the income of deceased as Rs.3,000/- per month, deducted 1/3rd there-from and arrived the loss of monthly dependency at Rs.24,000/-. Concerning the multiplier, the Tribunal considering that the deceased was in the age group between 20-25 years, arrived at the multiplier '17.55' and, accordingly, applied the same, and arrived the loss of dependency at Rs.4,21,200/-. The Tribunal also granted a sum of Rs.15,000/- to the petitioner No.1 being wife of the deceased towards loss of consortium; a sum of Rs.20,000/- to all the petitioners towards loss of love and affection; Rs.2,000/- towards transport of dead body; Rs.2,000/- towards funeral expenses and, thus, in all, granted Rs.4,60,200/- as compensation against respondent Nos.1 to 3 alone by dismissing the claim against respondent Nos.4 and 5 with interest at 7.5% per annum thereon.

8. Aggrieved over the said order and decree, respondent No.3 - Insurer preferred the instant appeal contending that Tribunal has not

appreciated the evidence on record, as the Tata Mobile Car is a Transport vehicle, whereas respondent No.1 was having driving license for motor cycle with gear and non-transport vehicle only and, therefore, sought to allow the appeal.

9. Heard Sri Kota Subba Rao, learned Standing Counsel for the appellant - Insurer; Sri N. Nageswara Rao, learned counsel for respondent Nos.1 to 5 - petitioners and Sri S. Appadhara Reddy, learned counsel for respondent Nos.6 and 7. It is shown in the cause title that respondent Nos.8 and 9 are not necessary parties.

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

11. On perusal of the order under challenge, the Tribunal placing reliance on the decision of the Hon'ble Supreme Court in **National Insurance Company Limited v. Annapa Irappa Nesaria and others**¹, held that the Insurance Company is liable to pay the compensation and its liability cannot be exempted, despite the fact that the driver was not holding a valid driving license to drive transport vehicle since he was holding a Light Motor Vehicle Non-Transport driving license.

12. However, in view of the law declared by the Hon'ble Supreme Court in **S. Iyyapan v. United India Insurance Company**

¹. 2008 ACJ 721 (SC)

Limited and another² and Kulwant Singh v. Oriental Insurance Company Ltd.³, the Insurance Company - respondent No.3 is directed initially to deposit the compensation amount and recover the same from respondent Nos.1 and 2 in O.P. before the Tribunal.

13. Accordingly, the appeal is allowed and the order and decree, dated 10-07-2008, in O.P. No.697 of 2007, passed by the Tribunal are modified, **(as indicated in the above)** by directing respondent No.3 - M/s. ICICI Lombard General Insurance Company Limited to deposit the compensation amount initially and recover the same from respondent Nos.1 and 2 in O.P. before the Tribunal. No order as to costs.

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

A. SHANKAR NARAYANA, J

September 12, 2016.

Mgr

². AIR 2013 (SC) 2262

³. (2015) 2 SCC 186