HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3302 OF 2011

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred by The United India Insurance Company Limited, assailing the order and decree in O.P. No.910 of 2009 dated 17.08.2011 passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - Additional District Judge, Nalgonda (for short 'the Tribunal'), whereby and whereunder, a compensation of Rs.6,48,000/- was granted with interest at 6% per annum as against the claim of Rs.6,50,000/- laid under Section 163-A, 166 read with Section 140 of the Motor Vehicles Act, 1988 and Rule 455 of the A.P. Motor Vehicles Rules, 1989, on the main grounds that (1) though, the deceased viz., Kalva Gopalakrishna contributed to the accident, still, the Tribunal held that only the driver of the DCM Van was negligent and responsible for the accident, (2) the driver of the DCM Van was not possessing valid driving licence to drive the DCM Van and (iii) the Tribunal without legally acceptable evidence being placed by the claimants, as regards income of the deceased, fixed monthly earnings of the deceased at Rs.6,000/- per annum; and, therefore, sought to set aside the order and the decree.

2. The appellant herein, which is insurance company, is respondent No.2 in the O.P. before the Tribunal, while respondent Nos.1 and 2 are the petitioners and respondent No.3, who is owner of

the DCM Van bearing No.AP-29-U-7787 that involved in the accident, is respondent No.1.

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

4(a) The facts that are absolutely necessary for disposal of the present appeal are that on 2.12.2008, at about 12.30 p.m., the said Gopalakrishna, who is son of the petitioners, was proceeding on his Hero Honda Splendor motorcycle bearing No.AP-27-D-8687 along with his colleague from Huzurnagar to Yadagiri Gutta and when reached outskirts of Pillalamarri village, the driver of the DCM Van driving the Van in a rash and negligent manner at high speed, dashed the motorcycle of Gopalakrishna coming in the opposite direction resulting in grievous injuries to Gopalakrishna and while he was being shifted to Government Area Hospital, Suryapet, succumbed to the injuries.

(b) The parents of the deceased claiming that the deceased used to earn Rs.5,000/- per month by working as Conductor in A.P.S.R.T.C. and contributing his income for their sustenance, sought a sum of Rs.6,50,000/- as compensation.

5. Respondent No.1, owner of the DCM Van that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer, filed counter resisting the claim attributing rash and negligent driving to the deceased and required the petitioners to prove that the DCM Van driver was possessing valid subsisting driving licence on the date of accident and even pleaded that in case the insured paid premium through cheque, as the said cheque was dishonoured, the insurer is not liable to pay any compensation under the subject policy and that the claim made by the petitioners is highly excessive and thereby sought to dismiss the claim petition.

7. The Tribunal has framed the following three (3) issues in order to fix responsibility about the accident and to determine the just compensation to which the petitioners are entitled.

"1. Whether the deceased Kalva Gopala Krishna died due to rash and negligent driving of the driver ofhte DCM van bearing No.AP-29-U-7787?

2. Whether the petitioners are entitled to claim compensation? If so, to what amount and from whom?

3. To what relief?"

8. During enquiry, on behalf of the petitioners, petitioner No.1 examined himself as PW.1 and marked Exs.A-1 to A-7. On behalf of the insurer, one M.A. Azeez, a Senior Assistant of Road Transport Authority, was examined as RW.1 and marked Ex.X-1.

9. The Tribunal, on issue No.1, by examining the documentary evidence through Exs.A-1 to A-6, arrived at the conclusion that only due to rash and negligent driving of the driver of the DCM Van, the accident occurred resulting in the death of deceased.

10. On issue No.2, appreciating the evidence on record, more particularly, the evidence of RW.1 and the entries in Ex.X-1 and opined that the driver of the DCM Van was holding valid driving licence. So far as compensation is concerned, taking Rs.200/- per day as the daily wage or Rs.6,000/- per month, deducted 50% thereof towards personal and living expenses as the deceased was unmarried, applied multiplier factor '18' relying on the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1], and arrived at Rs.6,48,000/- and awarded the same with interest at 6% per annum.

11. Assailing the aforesaid order, the present appeal is preferred by the insurance company by putting-forth the grounds already mentioned hereinabove.

12. Heard Sri E. Venugopal Reddy, learned standing counsel for the insurer (appellant), and Sri Chalakani Venkat Yadav, learned counsel for the petitioners (respondent Nos.1 and 2 herein).

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1. (2009) 6 SCC 121

13. Though, the insured is unserved, since he remained *ex parte* before the Tribunal and already suffered decree, non-service of notice on him is of no significance to determine the issues involved herein.

14. So far as the first ground is concerned, the very fact that the crime was registered against the DCM Van driver and the evidence through Exs.A-1 to A-6 since, definitely indicates rash and negligent driving of the driver of the DCM Van, certainly, the finding recorded by the Tribunal cannot be upset. In fact, nothing is placed on record by the insurer to show that the deceased contributed to the accident. Mere fact that the deceased was proceeding with a woman colleague is no ground to upset the finding recorded by the Tribunal. Therefore, that ground is rejected.

15. Before adverting to the second ground, whether the DCM Van driver did possess valid subsisting driving licence on the date of accident, it is necessary to advert to the compensation determined by the Tribunal in the direction of whether it can be termed as excessive and arbitrary or just and fair compensation to which the petitioners are entitled.

16. The Tribunal has taken daily wage of the deceased at Rs.200/- per day applied multiplier factor '18', as the deceased was 23 years old as per Ex.A-3 postmortem report, relying on the decision in **Sarla Verma's Case**[1]**,** having deducted 50% of the earnings as the

deceased died in unmarried status. A perusal of the inquest report - Ex.A-5 would show the deceased as conductor in the description column of the deceased, and the very case of the petitioners is that the deceased was working as a conductor in A.P.S.R.T.C., Yadagiri Gutta Bus depot. Even charge-sheet averments (Ex.A-2) would show that the deceased was working as a 'conductor' on contract basis in Yadagiri Gutta Bus Depot. In the claim petition, the petitioners got mentioned the income of the deceased as Rs.5,000/- per month. In the affidavit filed by petitioner No.1 as PW.1, he got mentioned the income of the deceased as Rs.5,000/- per month. It is no doubt true, in his chief-examination, PW.1 stated that he has not filed any document to show the income of the deceased, but, when it is not in dispute that the deceased was working as conductor on contract basis in A.P.S.R.T.C., Yadagiri Gutta Bus Depot, the assertion of the petitioners that he was drawing Rs.5,000/- per month cannot be sidelined. However, the Tribunal placing reliance on the ruling in **Sarla Verma's Case**[1] and extracting the relevant observations touching "addition to income for future prospects", viewed that it would be just and reasonable to fix Rs.6,000/- as monthly income of the deceased and worked out the loss of dependency. The instant finding recorded by the Tribunal appears to be wrong/perverse for two resons i.e., (1) the deceased died in unmarried status and (2) the father of the deceased is also one of the claimants and, therefore, it cannot be construed that mother of the deceased was totally dependant on him so as to apply the law laid down by the Hon'ble Supreme Court in

Sarla Verma's Case[1] addition of any percentage towards future prospects. Hence, it is just and reasonable to fix the monthly earnings of the deceased as Rs.5,000/- instead of Rs.6,000/- fixed by the Tribunal. But, in view of the decision of the Hon'ble Supreme Court in **Amrit Bhanu Shali and others v. National Insurance Company Limited and others**[2] and **Munnalal Jain and another v. Vipin Kumar Sharma and others**[3], the multiplier factor '18', as the deceased was aged 23 years, taken by the Tribunal cannot be faulted. So, after deduction of 50% (Rs.5,000/- x ½) towards personal living expenses of the deceased, the remainder, Rs.2,5000/-, which has to be construed as contribution of the deceased to his family is taken and capitalized with multiplier factor '18', loss of dependency works out to Rs.5,40,000/-. The Tribunal has not granted any amount towards funeral expenses, and, therefore, a sum of Rs.5,000/- is granted under this head.

17. Thus, the petitioners would be entitled to Rs.5,45,000/- (Rupees five lakhs forty five thousand only) towards compensation as against Rs.6,48,000/- granted by the Tribunal. Turning to the rate of interest at 6% per annum, from the date of petition till realization, awarded by the Tribunal, the same need not be disturbed since no appeal is preferred by the petitioners (claimants).

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2 2012 AIR SCW 3901
3 (2015) 6 SCC 347

18. Now turning to the terms and conditions of the insurance policy, though, the evidence of RW.1 is not that clear, the contents of Ex.X-1, driving licence extract record of the driver of the vehicle involved in the accident, marked through him would clinch the issue. Ex.X-1, which was issued by the Additional Licensing Authority, Unit Office, Bhongir, Nalgonda, clearly shows that the driver was holding Driving Licence Number DLEAP124126572003 as per the office records and the said licence was issued on 20.05.2003 to the driver K. Srishailam, son of Narsimha, and he was authorized to drive Motor Cycle with Gear and Light Motor Vehicle (Non-Transport) valid upto 19.05.2023. It also shows that an endorsement was also made to the effect that the driving licence to drive the Light Motor Vehicle (Transport) was valid upto 01.08.2007. Thus, it is clear that he was possessing valid subsisting driving licence to drive the non-transport light motor vehicle upto 19.05.2023. The accident in the present case had taken place on 02.12.2008. It is no doubt true, he was not possessing valid subsisting driving licence to drive the light motor vehicle (Transport) on the date of accident since it expired by 01.08.2007, but the applicability of the law declared by the Hon'ble Supreme Court has to be viewed in the present circumstances. The law laid down by the Hon'ble Supreme Court in **S. Iyyapan v. United India Insurance Company Limited and another**[4] squarely applies to a case of this nature and therefore, the insurer is directed to initially pay the compensation amount and recover the same from the

[4](2013) 7 SCC 62

insured (owner of the vehicle). Accordingly, the insurer is directed to pay the compensation of Rs.5,45,000/- to the petitioners with interest at 6% per annum from the date of petition till realization and recover the same from the insured.

19. Accordingly, the Civil Miscellaneous Appeal is allowed in part by modifying the order and decree under challenge to the extent indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

November 2, 2016.
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