HON'BLE SRI JUSTICE S. RAVI KUMAR

M.A.C.M.A.No.17 of 2013

JUDGMENT:

This appeal is preferred against the order dated 21.09.2012 in M.V.O.P.No.1038 of 2011 on the file of the Chairman, Motor Accidents Claims Tribunal –cum- VIII Additional District Judge (FTC), Warangal.

2. Respondents 1 to 5 herein submitted application under Section 166(1)(c) of Motor Vehicles Act, 1988 to the Claims Tribunal claiming compensation of Rs.5,00,000/- for the death of Bolla Srinivas (hereinafter referred to as 'the deceased') in a motor accident. They contended that on 26.01.2011, while the deceased was traveling in an auto, at about 8.00 p.m when the auto reached Ramathirtham Bus stage, driver of tractor bearing No.T/RAP36 drove the tractor in a rash and negligent manner at high speed and dashed against the auto in which the deceased was traveling, as a result, the deceased sustained injuries and he was shifted to MGM Hospital, Warangal, where he succumbed to injuries. They contended that respondent No.1 is the registered owner of tractor and trailer and respondent No.2 is the insured and that both of them are liable to pay compensation. Both owner and insurance company filed counters disputing the claim. According to counter of insurance company, the accident was not reported to them by the owner of the tractor and the application was filed by the claimants in collusion with the owner and that the insurance company is not liable, as the

tractor driver had no valid and effective driving licence and prayed for dismissal of the claim petition. On these contentions, the Claims Tribunal conducted enquiry, during which, two witnesses were examined and five documents were marked on behalf of the claimants and one witness was examined and one document was marked on behalf of the insurance company. On an overall consideration of oral and documentary evidence and by relying on decisions cited before it, the Claims Tribunal granted compensation of Rs.5,00,000/- with interest @ 7.5% per annum holding that both owner and insurance company are jointly and severally liable to pay the said amount. Aggrieved by the award of the Claims Tribunal, insurance company preferred the present appeal.

3. Heard both sides.

4. Advocate for appellant submitted that lower Tribunal failed to see that the auto was overloaded at the time of accident and that the accident was due to the rash and negligent act of the driver of auto, as such, there is no liability for the insurance company to pay any compensation. He further submitted that driver of the tractor was not having valid driving licence at the time of accident and does not possess valid documents like registration certificate, fitness certificate, insurance policy etc., and as there is violation of policy condition, there is no liability for the insurance company to pay any compensation. He further submitted that the lower Tribunal erred in granting compensation of Rs.5,00,000/- and the same is high and excessive. He submitted that lower Tribunal was not right in

granting interest @ 7.5% per annum, for these reasons, the award of the lower authority is liable to be set aside.

5. On the other hand, Advocate for claimants submitted that the evidence on record would clearly show that the accident was purely due to the rash and negligent driving of the tractor driver and the objection of the insurance company that the driver of auto is responsible for the accident is not tenable. He submitted that insurance company except taking a plea that the driver of tractor was not having valid and effective driving licence at the time of accident has not substantiated the said plea, therefore, the Tribunal rightly negatived the objection of the insurance company. He further submitted that the claim of Rs.5,00,000/- is quite reasonable and the interest granted is also in accordance with settled law, therefore, there are no grounds to interfere with the findings of the Tribunal including the quantum of compensation.

6. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 21.09.2012 in M.V.O.P.No.1038 of 2011 on the file of the Chairman, Motor Accidents Claims Tribunal – cum- VIII Additional District Judge (FTC), Warangal, is legal, proper and correct?

POINT:

7. There is no dispute that the deceased Srinivas died in a motor accident. Wife of the deceased was examined as P.W.1 and through her, certified copies of FIR, inquest report, postmortem report, MVI

report and charge sheet were marked as Exs.A.1 to A.5. Though she was cross-examined, nothing could be elicited from her to show that driver of auto was responsible for the accident. Claimants also examined an eyewitness as P.W.2, who was a co-passenger in the auto. He clearly stated that on 26.01.2011, he along with the deceased and another were returning to their village in the auto and when the auto reached near Ramathirtham village, a tractor bearing No.T/RAP36 came in opposite direction at high speed in a negligent manner and dashed their auto, as a result, the deceased and Shravan Kumar sustained injuries and that the same was informed to their respective families and the deceased was shifted to MGM Hospital, Warangal. In the cross examination, he stated that there were only four persons in the auto including driver at the time of accident and he denied the suggestion that there were six members in the auto at the time of accident. In the cross examination, he stated that the deceased was sitting to his right whereas Shravan Kumar was in between himself and the deceased. Except putting suggestions, nothing could be elicited from this witness to support the version of insurance company that was taken in the counter. So, from the evidence of P.W.2, which is supported and corroborated with documents – Exs.A.1 to A.5, it is clear that the accident was purely due to the rash and negligent driving of the tractor driver. Lower Tribunal, on a consideration of this evidence, negatived the objection of the insurance company that the accident was due to the overloading in the auto and negligence of the auto driver. I do not find any wrong in the order of the claims Tribunal in discarding the objection of insurance company with regard to negligence part.

8. The other contention of the insurance company is that the driver of the tractor was not having valid and effective driving licence at the time of accident. Having taken such a plea, it is for the insurance company to substantiate the same. On behalf of insurance company, R.W.1 was examined. He was Divisional Manager in the insurance company and he stated in the chief examination that as per the charge sheet, driver of the crime vehicle was not having valid driving licence at the time of accident and that the vehicle was not possessing valid documents. The charge sheet was marked as Ex.A.5 and as seen from it, the driver was charge sheeted only for the offences under Sections 304-A and 337 I.P.C and no offences for violation of provisions of the Motor Vehicles Act, 1988 are charge sheeted against him. So, the contention of R.W.1 that the driver was charge sheeted for not having valid driving licence is not supported from the averments of the charge sheet as the driver was only charge sheeted for the offences under Sections 304-A and 337 I.P.C.

9. In the cross examination, R.W.1 stated that the company did not verify the RTA records and that they addressed letters to the owner of the vehicle demanding production of the driving licence, that they did not receive any reply from the owner, but this is not sufficient to discharge their onus. The insurance company ought to have summoned the RTA authorities to show that the driver of the

crime vehicle i.e., tractor was not having valid and effective driving licence as on the date of accident. As rightly recorded by the lower Tribunal, insurance company did not take any steps to get the records summoned from RTA, Warangal. Lower Tribunal has rightly appreciated the material on record with regard to the plea of driving licence and came to a right conclusion that the insurance company failed to substantiate that the driver of crime vehicle drove the vehicle without having valid driving licence. I do not find any wrong in the approach of the lower authority in discarding the objection of the insurance company and therefore, the objection of the insurance company with regard to driving licence is not tenable.

10. The next objection of the insurance company is that lower Tribunal granted Rs.5,00,000/- without any material. As seen from the award, claimants contended that the deceased was earning Rs.4,500/- per month on agriculture and on account of his death, they lost their breadwinner. Though lower Tribunal recorded finding that evidence would disclose that the income of the deceased was Rs.4,000/- per month, it only took Rs.3,000/- per month as his income and out of which, 1/4th was deducted towards his personal expenses and net income was taken as only Rs.2,250/- and it was multiplied with the multiplier applicable to the age group of the deceased as per the decision of the Hon'ble Supreme Court in *Sarla Verma & others v. Delhi Transport Corporation and another*[1], and on that basis, calculated the compensation and to that the

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[1] (2009) 6 Supreme Court Cases 121

Tribunal added a sum of Rs.20,000/- towards loss of consortium and Rs.10,000/- towards funeral expenses, and held in total, the claimants are entitled for Rs.5,00,000/-. I do not find any wrong in the calculation made by the lower authority in fixing Rs.5,00,000/- and the objection of the insurance company with regard to quantum cannot be accepted.

11. The other objection of the insurance company is that the Claims Tribunal granted interest @ 7.5% per annum and the same is high and excessive, but the same cannot be accepted as the Claims Tribunal on consideration of various decisions of Hon'ble Supreme Court granted that interest and therefore, the objection of insurance company with regard to rate of interest is negatived.

12. In view of my foregoing observations and findings, I am of the view that the appeal is devoid of merits and liable to be dismissed.

13. Accordingly, appeal is dismissed. No costs.

14. Miscellaneous Petitions pending, if any, shall stand closed.

S. RAVI KUMAR, J

Date: 26.08.2016
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