HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.243 of 2009

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by respondent No.3 – United India Insurance Company Limited (for brevity "the insurer"), challenging the Award and decree dated 02.03.2007, passed in O.P.No.314 of 2006 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar (for brevity "the Tribunal"), whereby and whereunder, while granting a compensation of Rs.6,00,000/-, as against the claim of Rs.10,00,000/- laid under Section 166(1)(c) of the Motor Vehicles Act, 1988 by discarding the defence put-forth by the insurer, while partly accepting the same also, the Tribunal directed the appellant/insurer to initially deposit and recover the compensation amount from the owner of the offending vehicle.

2. Appellant is the insurer and respondent Nos.1 to 4 are the petitioners/claimants, and respondent Nos.5 and 6 are driver and owner, respectively, of the offending vehicle i.e., Bajaj CT 100 DLX motor cycle bearing No.AP-15AB-4349, in O.P.No.314 of 2006. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.314 of 2006 before the Tribunal.

3. The fact situation would show that on 03.11.2006, one Ankam Venkanna, who was a resident of Paidimadugu village, Koratla Mandal, Karimnagar District, having purchased provisions at Koratla, was returning on his Hero Honda CD 100 motor cycle bearing No.AP-15J-4851 and when he reached near agricultural well of Guntuka Laxmi Rajam, at about 6.40 p.m., the 5th

respondent – driver of the motor cycle bearing No.AP-15AB-4349 coming in opposite direction, drove it in a rash and negligent manner at high speed and dashed the two wheeler driven by the deceased – Ankam Venkanna, due to which the deceased received bleeding injuries on the head and eyes and at the advice of the doctor at Koratla, while he was being shifted to Hyderabad, on the way succumbed to the injuries.

4. The petitioners, being the wife, son and parents of the deceased, stating that the deceased was running a Fair Price Shop at Paidimadugu village and earning Rs.5,000/- per month, filed the aforesaid claim petition seeking a compensation of Rs.10,00,000/-.

5. Respondent Nos.1 and 2, who are driver and owner, respectively, of the offending motor cycle bearing No.AP-15AB-4349, filed their counter stating that the said vehicle was insured with the 3rd respondent – insurer and, as such, the insurer is under an obligation to indemnify the 2nd respondent – owner.

6. The 3rd respondent – insurer opposed the claim, while raising other usual pleas, stating that the 1st respondent – driver was not holding a valid driving licence, at the relevant time and, therefore, sought to dismiss the claim against the insurer.

7. The Tribunal, basing on the aforesaid pleadings, framed the following three issues to decide the liability as well as the quantum of compensation, to which the petitioners/claimants are entitled to.

> "1. Whether the accident had occurred due to rash and negligent driving of the vehicle bearing No.AP-15AB-4349 by its driver?
>
> 2. Whether the petitioners are entitled for compensation, if so, to what amount and from whom?

3. To what relief?”

8. During the course of enquiry, the petitioners examined P.Ws.1 and 2 and marked Exs.A-1 to A-12. On behalf of the insurer, the Assistant Administrative Officer from the local Branch of the insurer was examined as R.W.1, through whom Exs.B-1 and B-2, which are copies of Insurance Policy issued by the insurer and M.V.I. Report, respectively, were marked.

9. The Tribunal, having appraised the evidence on record, on Issue No.1, held that due to rash and negligent driving by the 1st respondent – driver, the accident had occurred resulting in the death of the deceased and, thus, favoured the petitioners.

10. On issue No.2, the Tribunal, having fixed the salary of the deceased at Rs.4,500/- per month or Rs.54,000/- per annum, deducted 1/3rd thereof towards personal expenses of the deceased and the balance amount of Rs.36,000/- was taken towards contribution to the family and basing on the decision of the Apex Court in BHAGWANDAS v. MOHD. ARIF[1], by taking the age of the deceased as 32 years, applied the multiplier ’15.83’ and worked out a sum of Rs.5,69,880/- towards pecuniary damages.

11. The Tribunal, while referring to the decision in Y. VARALAXMI vs. M. NAGESHWAR RAO[2], which was also relied on in an unreported decision in RAVULA RAJESHWAR RAO vs. O. VENKANNA (C.M.A.No.1062 of 1999), granted a sum of Rs.30,000/- towards non-pecuniary damages, thus, arrived at a total compensation of Rs.5,99,880/- (Rs.5,69,880/- + Rs.30,000/-), but however, rounded it off to Rs.6,00,000/-, by apportioning the

same towards the share of each of the petitioners with interest at 7.5% per annum.

12. In para-12 of the Award dated 02.03.2007, though, the Tribunal, on one hand, recorded a finding that the 3rd respondent – insurer cannot escape its liability to the third parties, again in the immediate next sentence, it recorded a finding that the insurance company shall initially deposit the amount and recover the same from the 2nd respondent – owner of the vehicle, on being found that the 1st respondent – owner of the offending vehicle was not holding a valid and effective driving licence as on the date of accident.

13. The aforesaid Award is under challenge in the instant appeal by the 3rd respondent – insurer, mainly contending that the Tribunal went wrong in giving such a direction to the Insurance Company to deposit the compensation amount initially and recover the same from the owner of the offending vehicle, as per the law declared in NEW INDIA ASSURANCE COMPANY vs. VENKATA RAMANA AND OTHERS[3].

14. Heard Sri A. Ramakrishna Reddy, learned Standing Counsel for the appellant – insurer, as well as Sri K. Venu Madhav, learned counsel for respondent Nos.5 and 6, who are driver and owner, respectively, of the offending vehicle. Despite service of notice, none appears for respondent Nos.1 to 4/petitioners.

15. It is not in dispute that the 1st respondent, who caused the accident, was not holding a valid and effective driving licence, at all. As could be seen from oral and documentary evidence on

record, no licence, at all, was marked on behalf of the petitioners. In such a situation, the decision of the Apex Court in NATIONAL INSURANCE COMPANY LIMITED v. SWARAN SINGH AND OTHERS[4], would be applicable. In that view of the matter, the finding recorded by the Tribunal directing the insurer to initially deposit the amount and recover the same from the owner of the offending vehicle is to be set aside and accordingly, the said finding is set aside.

16. As seen from the docket proceedings in the instant appeal, by order dated 01.05.2008, while ordering notice before admission, this Court granted interim stay of all further proceedings on condition of the appellant/insurer depositing half of the award amount within a period of six weeks from the date of the said order. On 12.02.2009 in MACMA.MP.No.585 of 2009, the stay granted earlier was made absolute and the petitioners/claimant Nos.1, 3 and 4 were permitted to withdraw their share of amount without furnishing any security, while directing to deposit Rs.1,00,000/- towards minor's share (2nd petitioner) in a Fixed Deposit.

17. Keeping in view the said circumstances, the appellant/insurer is at liberty to recover the amount already withdrawn by the petitioners/claimants from the owner of the offending vehicle, who is respondent No.6 herein. The petitioners/claimants are at liberty to recover the balance amount from the 6th respondent herein. It is also made clear that if the amount kept in the Fixed Deposit towards the share of the 2nd petitioner/claimant is still available, the appellant/insurer is at liberty to seek return of the said amount.

18. Accordingly, the Civil Miscellaneous Appeal is allowed, while confirming the Award dated 02.03.2007 in O.P.No.314 of 2006 passed by the Tribunal, in all other respects, so far as the driver and owner of the offending vehicle are concerned. No order as to costs.

19. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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20.07.2016.
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[1] 1987 (2) ALT 137

[2] 1988 (1) ALT 337

[3] 2006 ACJ 1778

[4] 2004 (2) ALD 36 (SC)