HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.2351 OF 2009
AND
CROSS OBJECTIONS (SR) No.22821 OF 2009

COMMON JUDGMENT:

The present appeal is preferred by respondent No.2 – M/s. New India Assurance Company Limited in M.V.O.P.No.374 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal – cum – I Additional Chief Judge, City Civil Court, Secunderabad, aggrieved over the order and decree, dated 18.02.2008, passed in the said O.P., whereby and whereunder, a sum of Rs.1,40,490/- was awarded as compensation for the death of one P. Eshwar, who is the son of respondent Nos.1 and 2 herein, incidentally petitioners – claimants in the O.P., on the main ground that there was fundamental violation of the terms and conditions of the policy, as the driver, who drove the offending vehicle i.e., tractor and trailor, at the relevant time, was not possessing subsisting driving licence to drive the non-transport vehicle.

2. Cross Objections are filed by the petitioners in the O.P. seeking enhancement of compensation.

3. The appellant is respondent No.2, whereas respondent Nos.1 and 2 – cross objectors are the petitioners and respondent No.3, who is the owner of the tractor and trailor that involved in the accident, is respondent No.1, in the O.P. before the Tribunal.

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

5. The fact-situation would reflect that on 05.08.2003 at about 02:00 PM, while the deceased, P. Eshwar, was standing near water tank in Women Training Centre, Mamilla, Hayatnagar, driver of the tractor and trailor bearing registration Nos.AP-28-T-9351 and AP-28-T-9352, while reversing the vehicle negligently, hit the deceased, due to which, he was crushed between the tractor tanker and water tank, resulting in his instantaneous death.

6. The petitioners, being the parents, claiming that the deceased was earning Rs.3,000/- per month and contributing the entire earnings for the maintenance of family, and he being the sole earning member of the family, sought a compensation of Rs.3,00,000/- under Section 166 of the Motor Vehicles Act. It appears that the petitioners have also filed W.C.No.88 of 2003 before the Commissioner for Workmen's Compensation – cum – Assistant Commissioner of Labour, Hyderabad, but it is recorded by the Tribunal in the order under challenge that the same was not pressed before the arguments were tendered in the present claim petition.

7. Both the respondents filed separate counters opposing the claim.

8. The stand of respondent No.1 – owner of the tractor was that, since, the tractor was insured with respondent No.2, it is liable to compensate under the terms and conditions of the Contract and, therefore, sought to dismiss the claim petition against him.

9. Respondent No.2 raised various usual pleas, one of which relates to the absence of possessing valid driving licence by the driver of the tractor at the relevant time.

10. Basing on the said pleadings, the Tribunal has framed three issues.

11. During enquiry, on behalf of the petitioners, PW.1 was examined and Exs.A1 to A6 were marked. On behalf of the respondents, RWs.1 to 3 were examined and Exs.B1 to B13 were marked.

12. The Tribunal, on appreciation of evidence on record, recorded finding on issue No.1 in favour of the petitioners. On issue No.2, it did not agree with the stand of respondent No.2 and while observing that the driver, still, holds valid driving licence to drive 'light transport vehicle' on the date of accident, raised presumption that no knowledge can be attributed to respondent No.1 that the driver, whom he engaged, was not holding valid driving licence. Thus, the Tribunal did not agree with respondent No.2 that there was violation of the terms and conditions to the policy. The Tribunal,

taking the income of the deceased at Rs.15,000/- per annum from the second schedule to Section 163A of the Motor Vehicles Act, since, there being no proof that the deceased was working as labourer and earning Rs.3,000/- per month, except the solitary testimony of PW.1, and applying multiplier '13.61', taking the age of younger parent of the deceased, arrived at Rs.1,22,490/- towards loss of dependency and granted the same, besides granting Rs.1,000/- towards transport charges, Rs.2,000/- towards funeral expenses and Rs.15,000/- towards loss of estate, comprising loss of expectation of life, pain and suffering and loss of amenities, thus, making a total of Rs.1,40,490/-, with interest at 7.5% per annum, and apportioned the same amongst the petitioners.

13. It is the aforesaid order which is under challenge in the present appeal by the appellant - insurer on the main ground that the driver of the tractor did not possess valid and subsisting driving licence to drive the non-transport vehicle on the date of accident and, therefore, sought to set aside the order and decree under challenge passed by the Tribunal to the extent of fastening liability on it.

14. By way of cross objections, the petitioners sought to enhance the compensation stating that the Tribunal ought to have taken the income of the deceased at Rs.20,000/- per annum and ought not to have applied the multiplier factor provided in **Bhagwan Das v.**

Mohd. Arif[1], and also sought to grant Rs.5,000/- towards funeral expenses and Rs.3,000/- towards transport charges, as against Rs.2,000/- and Rs.1,000/-, respectively, granted by the Tribunal.

15. No representation for learned counsel for the appellant and learned counsel for respondent No.3.

16. Heard Sri A. Eswar, learned counsel for respondent Nos.1 and 2 – cross objectors

17. Turning to the grievance of the appellant herein, it is no doubt true, as could be seen from the evidence on record, that the driver of the tractor was holding transport licence valid from 17.07.2003 to 28.10.2007, whereas the non-transport licence was only valid up to 16.07.2003, the accident, in this case, had taken place on 05.08.2003 and, therefore, certainly, on the date of accident, driver of the tractor did not possess valid and subsisting driving licence to drive the non-transport vehicle, which is the accident vehicle herein, but, however, the submission of the learned counsel for respondent Nos.1 and 2 is that in view of the law declared by the Honourable Supreme Court in **S.Iyyapan v. United India Insurance Company Limited and another**[2], initial liability can be fastened on the insurance company and the insurance company cannot seek total exemption, where the driver was possessing valid and subsisting driving licence

[1] 1987 (2) ALT 137
[2] (2013) 7 SCC 62

to drive the transport vehicle as on the date of accident. There cannot be any quarrel with the law declared by the Honourable Supreme Court in the said case. Therefore, the absolute liability fastened on the insurance company can be modified to that of initial liability to pay the compensation amount, initially, which would be determined basing on the cross objections filed by respondent Nos.1 and 2, and recover the same from respondent No.3 – owner of the tractor. To that extent, the appeal can be allowed modifying the order and decree passed by the Tribunal.

18. So far as cross objections filed by respondent Nos.1 and 2 – claimants are concerned, it is true, the Tribunal ought not to have taken the multiplier factor from **Bhagwan Das**'s case (supra 1) and ought to have taken the multiplier factor provided in the second schedule to Section 163A of the Act. But, however, the law is now well settled in **Sarla Verma v. Delhi Transport Corporation**[3] and **Munna Lal Jain and another v. Vipin Kumar Sharma and others**[4], that the age of the deceased has to be taken to work out the multiplier factor, in which case, the multiplier factor would be '18' as against '13.61' adopted by the Tribunal.

19. Turning to the other submission that the deceased was earning Rs.20,000/- per annum and the Tribunal was not right in

---

[3] (2009) 6 SCC 121
[4] (2015) 6 SCC 347

fixing the income of the deceased at Rs.15,000/- per annum, no evidence is forthcoming, except the submission of PW.1 that the deceased was working as labourer. Though, it is claimed that the deceased was '19' years old, the Post-mortem Examination Report shows that he was only 15 years old.

20. Be that as it may, even taking the income of the deceased at Rs.20,000/- per annum, since, he was not married on the date of accident, 50% thereof when deducted towards his personal living expenses and when multiplier '18' is applied, the loss of dependency works out to Rs.1,80,000/-. Even granting the amounts of Rs.5,000/- and Rs.3,000/- sought for by respondent Nos.1 and 2, as against Rs.2,000/- and Rs.1,000/-, respectively, granted by the Tribunal, and maintaining the amount of Rs.15,000/- granted by the Tribunal towards loss of estate, comprising loss of expectation of life, pain and suffering and loss of amenities, the same would work out to Rs.23,000/- and put together, respondent Nos.1 and 2 – cross objectors are entitled to Rs.2,03,000/-. Therefore, the same is granted.

21. So far as the rate of interest is concerned, since, the Tribunal awarded interest at 7.5% per annum, which is in tune with the interest at 7.5% per annum awarded by the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**[5], the same is maintained on the enhanced amount also.

[5] (2013) 9 SCC 54

22. Accordingly, the appeal is allowed in part directing the appellant - Insurance Company to initially pay the compensation amount determined now and recover the same from respondent No.3 herein - owner of the tractor, and the cross objections are also allowed in part enhancing the compensation from Rs.1,40,490/- to Rs.2,03,000/- with interest at 7.5% per annum from the date of petition till realization.

23. The enhanced amount shall be apportioned among respondent Nos.1 and 2 – cross objectors in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

December 30, 2016
MD