THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 2084 of 2006

JUDGMENT:

This appeal is arising out of the Judgment and Decree dated 10.04.2006 passed in M.V.O.P.No.316 of 2002 by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Ranga Reddy, at L.B. Nagar, Hyderabad. The appellant is the insurance company, and the respondents are the claimants / legal representatives of the deceased P. Gopal.

2. Brief facts of the case are that on 25.10.2011, the deceased, who was working as Cleaner in the lorry bearing No.AP-11U-9093, was proceeding in the lorry from Hyderabad to Nizamabad, and when the lorry reached near Toopran, the driver of the lorry drove it in a rash and negligent manner due to which the lorry tyre got burst and the lorry tilted to a side, due to which the deceased fell down from the cabin of the lorry and suffered severe injuries and was admitted in Gandhi Hospital for treatment. He became paraplegic, lost movement of his legs and could not recover from the injuries, and expired on 06.02.2002. The claimants have filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.4,00,000/-, against respondents 1, 2 and 3, on account of the death of the deceased. The Tribunal, on consideration of the evidence of witnesses PWs.1 to 3, and the documents Exs.A1 to A6 and Ex.B1, has awarded compensation of Rs.2,92,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realization, holding respondents 2 and 3, the owner and insurer, jointly and severally liable to pay the compensation. Aggrieved by the same, the 3rd respondent insurance company filed this appeal.

3. Heard the learned Standing Counsel Sri Kota Subba Rao, for the insurance company; and the learned counsel Sri U. Venkateswara Rao, for respondents-claimants 1 to 4.

4. Sri Kota Subba Rao, learned Standing Counsel for the appellant-insurance company contended that the injuries received by the deceased in the accident are not so fatal to cause death and, therefore, the death of the deceased was not due to the injuries received by him in the accident. It is contended that the Post-Mortem Examination report was not filed to prove the cause of death and that the cross examination of PW3 is not sufficient to conclude that the deceased died due to the injuries received by him in the accident. It is also contended that the Tribunal failed to see that no-fault liability does not attract to this case to make the insurance company liable to pay compensation.

5. Learned Standing Counsel placed reliance on the judgment of this Court in **United India Insurance Co. Ltd., v. Kore Laxmi**[1] and submitted that the accident did not occur due to negligence of the driver of crime vehicle and, as such, the insurer is not liable to pay any compensation. Drawing attention of the Court to paragraph 24 of **Kore Laxmi,** the learned Standing Counsel contended that the claimants have failed to prove rash and negligent act on the part of the driver of the crime vehicle and, therefore, the owner and insurance company are not liable to pay any compensation in this matter. Paragraph 24 of **Kore Laxmi** reads as under:

> **"Upon hearing the learned Counsel for the parties, and considering the various provisions of the MV Act, and the judgments of various Courts, governing the field, I am of the opinion that for laying a claim under the MV Act, it is necessary to plead and prove that the accident was the result of some actionable negligence of the third party. Without proving such actionable negligence on the part of the respondents, the claim**

[1] 2003 ACJ 203

petition for compensation under the MV Act is not maintainable. In the instant case, the facts on record disclose that the driver met with an accident due to his own negligence. Unless the claimants prove and establish that they have some cause of action against the party respondents, they cannot lay a claim under the MV Act. In the instant case, it is not the case of the claimants that the accident occurred due to some mechanical breakdown or the owner is negligent in maintaining the vehicle, and that the owner failed to discharge his duty cast on him or has acted in a careless manner. In the absence of such negligence on his part, the insured and the insurer cannot be made liable to pay compensation. There is neither any pleading nor any evidence on record to show that there is some breach committed by the owner of the vehicle in discharging his legal obligation."

6. It is lastly contended that though rash and negligent act on the part of driver of the crime vehicle was not proved, however, as the Tribunal has awarded compensation, the insurance company has deposited half of the compensation amount at the time of admitting the appeal in the year 2006 and the claimants have already withdrawn the deposited amount. Learned Standing Counsel fairly submits that, that without recovering the compensation already deposited by the insurance company, the liability of the insurance company for the rest of the compensation amount may be exonerated.

7. At the outset, it would be relevant to refer to Sections 140, 163A and 166 of the Motor Vehicles Act, which reads as under:

"140. Liability to pay compensation in certain cases on the principle of no fault.—

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of 1[fifty thousand rupees] and the amount of compensation payable under that sub-section in

respect of the permanent disablement of any person shall be a fixed sum of 2[twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. 3[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force: Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.]

Section 163A in The Motor Vehicles Act, 1988

1[163A. Special provisions as to payment of compensation on structured formula basis.—

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.—For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.]

166. Application for compensation.—

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made—

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be: Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. 1[(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed: Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.] 2[***] 3[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]

8. It is pertinent to note that the Tribunal, in paragraph 7(c) of the impugned Judgment, observed as under:

> **"….. In the facts and circumstances, the un-refuted evidence of PW2 may be sufficient to come to a just conclusion that the deceased who travelled as a cleaner on the lorry on the date of accident died subsequently due to the injuries sustained in the accident. But the said evidence is not sufficient to safely hold that the pleaded accident occurred due to the rash and negligent driving of the Lorry bearing registration number AP 11 U 9093, by its driver. …"**

9. In the light of the decision in **Kore Laxmi**, it is necessary to plead and prove that the accident was the result of rash and

negligent act on the part of the driver of crime vehicle, and without proving the rash and negligence on the part of driver of crime vehicle, the claim petition for compensation under Section 166 of the Act is not maintainable. In the instant case, the rash and negligence on the part of driver of crime vehicle was not proved. Though there is coverage of insurance for the vehicle involved in the accident, liability cannot be fastened to the insurance company as the rash and negligent act on the part of the driver of crime vehicle was not proved. Therefore, there is force in the submission of the learned Standing Counsel for the insurance company that the insurance company is not liable to pay any compensation.

10. It is pertinent to note that, in the instant case, the accident occurred in the year 2011, and, admittedly, the rash and negligent act on the part of the driver of the crime vehicle was not proved. However, as the Tribunal has awarded compensation, the insurance company has deposited half of the compensation amount at the time of admitting the appeal. Considering the fair submission of the learned Standing Counsel for the insurance company, in view of the facts and circumstances of the present case, the liability of the insurance company for the rest of the compensation is exonerated. Since the claimants have suffered a casualty and the O.P., is of the year 2002, the amount already deposited by the insurance company and withdrawn by the claimants shall not be recovered from the claimants.

11. **In the result**, the appeal is allowed in part. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

25th October, 2017
Ssp / Ksm

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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