

THE HON'BLE MR JUSTICE N.BALAYOGI

M.A.C.M.A. No.333 of 2008

JUDGMENT:

The appellant/respondent No.2, aggrieved by the Decree and Order dated 16.7.2007 in O.P.No.17 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge (F.T.C.) Anantapur, preferred this appeal.

2. The contention of the appellant is that the Tribunal failed to consider that the accident was occurred due to rash and negligent riding of the motorcycle rider and failed to consider his contributory negligence. The Tribunal failed to consider the evidence of R.W.1 and Exs.B1 to B3. It is further contended that the Tractor was registered in Prakasam District, whereas the accident was occurred in Anantapur District, thereby violated the permit and also conditions of the policy, hence the appellant is not liable to pay any compensation.

3. It is further contended that the driver of the tractor has no valid and effective driving licence as on the date of accident, thereby the 2nd respondent herein violated the terms and conditions of the policy. Further, the Tribunal erred in awarding the compensation with interest at 7.5% per annum.

4. On the other hand, the 1st respondent/claimant contended that while her husband and herself were proceeding on motorcycle driven by her husband and when they reached near Kalyanadurg and

Rayadurg road, the tractor bearing No.AP 27 D 49, driven by its driver in rash and negligent manner, came in opposite direction and dashed the motorcycle and as a result, the 1st respondent/claimant and her husband fell down and sustained injuries. The 1st respondent/claimant incurred expenditure of Rs.60,000/- towards medical expenses.

5. In the O.P., the following issues are settled for trial :

1. Whether the accident occurred on 1.4.2005 at about 11:45 a.m. due to rash and negligent driving of Tractor bearing No.AP 27 D 49 by its driver and dashed against the Motor Cycle and caused injuries to petitioner?
2. Whether the petitioner is entitled to compensation? If so, to what amount and from which respondent?
3. To what relief ?

6. In O.P. on behalf of the claimant, P.Ws.1 to 3 were examined and Exs.A1 to A5 besides Ex.X1 were marked. On behalf of the appellant - respondent No.2, R.W.1 was examined and Exs.B1 to B3 were marked.

7. Now the point that arises for determination is, “whether the order of the Tribunal suffers from any legal infirmities warranting interference.”

8. The undisputed facts are that the accident was occurred on 1.4.2005 at 11.45 AM involving the tractor bearing No.AP 27 D 49. At the time of accident, the husband of the 1st respondent was riding the motorcycle, whereas the 1st respondent is pillion rider.

9. The claimant herself was examined as P.W.1, besides examining the Doctors as P.W.2 and P.W.3. The consistent evidence of P.W.1 is that on 1.4.2005, while she along with her husband was proceeding on a Hero Honda motorcycle at about 11.45 AM when they reached Balaji Rice Mill near Kalyandurg on Rayadurg – Kalyandurg road, the driver of the tractor bearing No.AP 27 D 49 drove the vehicle in a rash and negligent manner with high speed, came in opposite direction and hit the motorcycle and as a result, she along with her husband fell down.

10. Ex.A1 is the certified copy of the F.I.R. and Ex.A3 is the certified copy of the charge-sheet. In Ex.A1 there is a clear assertion that while P.W.1 along with her husband returning from the marriage on their motorcycle, at about 11.45 AM when they reached near Balaji Rice Mill near Kalyandurg on Rayadurg – Kalyandurg road, the tractor driven in high speed and rash and negligent manner, came in opposite direction and dashed the motorcycle ridden by husband of P.W.1. Ex.A1 - complaint was lodged by P.W.1., who is the pillion rider on the motorcycle. The Investigating Officer, after thorough investigation, filed the charge-sheet against the driver of the tractor bearing No.AP 27 D 49 finding that he drove the tractor in a rash and negligent manner, came in opposite direction and dashed the motorcycle.

11. R.W.1 is none other than the Assistant Manager of the appellant. Admittedly, R.W.1 is not a direct witness to the accident. His evidence is only hearsay and that the husband of P.W.1 himself dashed the

tractor and fell down is not supported by any oral or documentary evidence. The appellant - respondent No.2, having taken the plea of contributory negligence, failed to adduce any rebuttal independent evidence.

12. In such circumstances, the Tribunal, having considered the oral evidence of P.W.1, supported by Exs.A1 and A3 and particularly, in the absence of any convincing, independent and direct rebuttal evidence, came to the right conclusion that the accident was occurred due to rash and negligent driving of the driver of the tractor bearing No. AP 27 D 49.

13. With regard to injuries, there is evidence of P.Ws.1 to 3. P.W.1 herself is the injured; P.W.2 was Civil Assistant Surgeon in Government General Hospital, Kurnool; and P.W.3 is one of the Doctors in the Medical Board who signed on Ex.A5 – Disability Certificate.

14. The consistent evidence of P.W.1 is that when the tractor hit the motorcycle ridden by her husband, both fell down from the motorcycle and she received grievous and fracture injuries i.e., fracture on the right leg. P.W.2 is the proper person to speak about the gravity of injuries. After perusing Ex.X1 – case sheet, he deposed that on 2.4.2005, P.W.1 admitted in the hospital with a fracture of shaft femur right side and fracture lateral tibia condole right side and she was undergone surgery on 14.4.2005 and discharged on 30.4.2005. Ex.A2 is the wound certificate wherein the Doctors specifically mentioned the

injuries – (1) closed fracture of right femur; (2) Laceration on right knee; (3) Laceration below right knee - bone deep; (4) Laceration on forehead – right side bone deep. X-ray taken in the Government General Hospital, Kurnool shows fracture of right femur and fracture of right leg tibia and the fracture injuries - 1 and 3 mentioned in Ex.A2 are grievous and other injuries are simple in nature.

15. P.W.3, who is one of the Medical Board Member signed on Ex.A5 – disability certificate, opined that the disability is 25%, which is permanent in nature, which is due to post traumatic sequelae with fracture right femur, segmental and open reduction internal fixation was done by plates and screws and there is compound fracture tibial condyle right knee with depression of joint surface with wasting of right thigh muscles and shortening of right lower limb of 2 cms. with decrease range of movements of right knee with limping. The Doctor also suggested she has to undergo another operation for removal of implants present in the right lower limb. The Tribunal having discussed elaborately the evidence of P.Ws.1 to 3 and considering the wound certificate under Ex.A2 and case sheet under Ex.X1, came to the right conclusions that P.W.1 has suffered permanent disability and she cannot attend to her normal duties, applied multiplier 14.810 considering her age as 35 and awarded the compensation of Rs.1,46,000/- fixing the liability against respondents 1 and 2 therein with interest at 7.5% per annum as the then existing bank rate of interest.

16. The last but not the least contention of the appellant is that the driver had no valid and effective driving licence and the tractor having registration at Prakasam District, plied at Anantapur, where the accident occurred, thereby violated the terms and conditions of the permit under Ex.B1-policy. Ex.B2 is the driving licence issued by RTA, Anantapur, according to which, the driver of the tractor possessed LMV Transport, MGV Transport, HGV Transport and HPV Transport driving licence and on the last occasion, the driving licence was renewed on 17.2.2004, which was in force till 16.2.2007. Therefore, the driver is having driving licence to drive even a transport vehicle and the tractor is a light motor vehicle.

17. Now, coming to the evidence of R.W.1, his evidence is that the driver has no valid and effective driving licence to drive the tractor and which has no valid permit. During cross-examination, R.W.1 admitted that the driver was having driving licence as on the date of accident, but his evidence is that there is no specific endorsement as tractor and trailer in the Ex.B2, which in fact clearly shows that the driver had transport licence to drive LMV, MGV, HGV and HPV vehicles and the driving licence was in force as on the date of the accident. Further, Ex.B3 is the R.C for the tractor bearing No. AP 27 D 49 along with trailer bearing No.AP 27 D 50, which is a light vehicle and the endorsement therein is that of RTA of Ongole, Prakasam District. The appellant, having taken the plea that it has to be plied only in Prakasam District and cannot ply in Anantapur, did not show any such clause

either in Ex.B3 - R.C. or in Ex.B1 - Policy. More so, R.W.1 clearly admitted that there is no bar for the vehicle to ply outside Ongole, Prakasam District also and the policy is in force on the date of accident.

18. In view of clear admission of R.W.1, I find no substance in the contention of the appellant that the driver has no valid and effective driving licence and the tractor has no permit to ply in Anantapur District. The Tribunal, having considered all these facts and oral and documentary evidence on record, came to the right conclusion that the driver of the tractor had valid and effective driving licence. Further, in view of the clear findings that the accident is due to rash and negligence of the driving of the tractor bearing No.AP 27 D 49, the insured and the insurer of the motorcycle, as deposed by R.W.1, are not proper and necessary parties and the claim without adding them as parties can be sustained.

19. In view of the facts and circumstances discussed above, I find that the accident was due to rash and negligence of the driver of the tractor bearing No. AP 27 D 49 and there is no bar for the tractor to ply in Anantapur. The driver of the said tractor has valid and effective driving licence as per Ex.B2. The findings of the Tribunal are legal, valid and do not suffer from any legal infirmities warranting interference.

20. In the result, the appeal is dismissed with costs while confirming the Decree and Order dated 16.7.2007 in O.P.No.17 of 2006 on the file

of the Motor Accidents Claims Tribunal-cum-IV Additional District Judge (F.T.C.) Anantapur.

21. The appellant-insurer and the 2nd respondent-owner of the crime vehicle are directed to deposit the compensation amount and interest, after adjusting the amount already paid/deposited, within four weeks from the date of receipt of a copy of the order. On such deposit, the 1st respondent is permitted to withdraw the same.

22. The Advocate Fee is fixed at Rs.2,000/-.

23. Miscellaneous Petitions, if any, pending in this appeal shall stand dismissed.

August, 2017
skmr

JUSTICE N.BALAYOGI

