THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

M.A.C.M.A.No.1314 of 2010

JUDGMENT:

This appeal is filed by the insurance company – 3rd respondent in M.V.O.P.No.1075 of 2008, against the award dated 16.04.2010 passed by the learned Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, West Godavari, Eluru (for short "the Tribunal).

The respondents/claimants filed the claim petition claiming a compensation of Rs.22,00,000/- on account of death of Gummalla John Wilson, who died in a motor accident that occurred on 16.10.2008. The claimants are the wife and children of the deceased.

The brief facts of the case are that on 16.10.2008 the deceased as pillion rider and his elder son Gummalla Devadanam as rider were proceeding on a motorcycle bearing registration No.AP-37-AH5450 towards Kalidindi village on Varahapatnam-Kalidindi road, at about 15.30 hours when they reached the scene of accident, one Auto bearing registration No.AP-16-TA483 came in rash and negligent manner at high speed and dashed the motorcycle of the deceased, as a result, the deceased and his son fell down and sustained multiple injuries and the deceased succumbed to injuries. The deceased was aged 45 years, he was hale and healthy and he was working as Teacher in U.P.School, Gokinepalli village, Pedavegi Mandal, West Godavari and getting salary of Rs.18,802/- per month by that time. The 5th respondent is the driver, 6th respondent is the owner of the offending Auto and the appellant is insurer.

The appellant/Insurance Company filed the counter denying its liability. It is contended that the 5th respondent had no licence to drive passenger Auto and there is contributory negligence on the part of the rider of the motorcycle, that the 6th respondent, who is the owner of the offending

Auto has violated the terms and conditions of the policy and hence, the insurance company is not liable to pay compensation.

On behalf of the claimant, P.Ws.1 to 3 were examined and got marked Exs.A.1 to A.10. On behalf of the Insurance Company, RWs.1 & 2 were examined and marked Exs.B1 & B2. Through PW 3, Exs.X1 & X2 were marked and through RW 2, Exs.X3 & X4 were marked.

The Tribunal, after considering the oral and documentary evidence, has awarded compensation of Rs.16,84,000/- as against the claim of Rs.22,00,000/-. Questioning the said award, the appellant-Insurance Company filed this appeal.

Learned Counsel appearing for the appellant/Insurance Company submits that the Tribunal erred in holding that the Insurance Company is liable to pay the compensation, inasmuch as, the driver of the offending auto did not possess licence to drive the said vehicle even though he had license to drive Light Motor Vehicle and Heavy Transport Vehicle. It is submitted that the class of vehicle that is insured by the appellant is altogether different and it does not amount to the driver of the offending vehicle competent to drive a three wheeler even though he had license to drive other class of vehicles such as Light Motor Vehicle and Heavy Transport Vehicle. Even with regard to the compensation, learned Counsel submits that the Tribunal erred in giving 30% addition towards future prospects even though the Pay Slip that is produced shows that the salary of the deceased was enhanced only from the month in which he died and therefore he could not have any future prospects at least for another five years. Therefore, the Tribunal ought not to have enhanced the earnings of the deceased towards future prospects.

On behalf of the claimants, it is submitted that the deceased is a third party insofar as the crime auto is concerned and admittedly, the auto was insured by the appellant which was subsisting at the time when the accident took place. It is also submitted that the driver of the auto was having valid driving license to drive Light Motor Vehicle even though he did not possess license to drive a three wheeler. It is submitted that the said violation do not amount to holding that the driver had no license at all. With regard to the income, learned Counsel submits that the Tribunal, as a matter of fact, erred in taking the net salary of the deceased even though he was earning more than what has been taken into account and addition of 30% towards future prospects cannot, in any way, said to be erroneous.

The finding of the Tribunal that the accident took place on the date, time and place, as alleged, is not disputed nor the finding of the Tribunal that the accident was due to the rash and negligent driving by the driver of the auto. The deceased was working as a teacher in Upper Primary School and was aged about 45 years. At the relevant time, he was traveling along with his son-PW.2 who also sustained injuries. It is also not in dispute that the 5th respondent herein who was driving the auto at the relevant point of time was possessing license to drive Light Motor Vehicle and Heavy Transport Vehicle and he was not possessing any license to drive a three wheeler/auto. RW.2 certified the above aspect with regard to the driving license of the driver of the auto. So also RW.1 admits the existence of the policy on the date when the accident took place. 6th respondent herein is the owner of the said auto.

Adverting to the contentions about the driver not possessing valid license, it can be said that even though the fifth respondent was having license to drive Light Motor Vehicle and Heavy Transport Vehicle, he was not possessing a license to drive an auto which is a three wheeler vehicle. The driving skills that are required for driving a three wheeler and the mechanism thereof are altogether different when compared to a four wheeler vehicle. Therefore, it cannot be said that a person who is having license to drive a four wheeler vehicle including heavy goods vehicle with the transport badge, can drive an auto, which is a three wheeler. The authorities will issue separate license for the auto rickshaw as spoken to by RW.2. Admittedly, the fifth respondent did not possess such a license. The auto cannot be said to be the vehicle which answers the description of a Light Motor Vehicle, Medium Goods Vehicle and Heavy Goods Vehicle. Therefore, it cannot be said that the fifth respondent was having license which was valid for driving the auto. However, the violation is not such which would altogether absolve the liability of the Insurance Company insofar the third parties are concerned. The breach that is committed by the sixth respondent/owner of the vehicle is apparent and therefore the Insurance Company can be directed to pay the compensation and recover the same from the insured/6th respondent in accordance with law as laid down by the Supreme Court in *Oriental Insurance Co.Ltd. v. Nanjappan*[1]. The Supreme Court in the said decision held as under:

> "8. Therefore, while setting aside the judgment of the High court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. The for the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the

[1] 2004 ACJ 721

> claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

It is no doubt true that if a person is having a license to drive the same class of vehicle though of different description, it cannot be taken as the person driving the vehicle not possessing the license. The person possessing license to drive Light Motor Vehicle can drive all types of four wheeler vehicles such as mini bus, omni bus, maxi cabs etc. Similar is the case with the medium goods vehicle and heavy goods vehicle. What is required is that the vehicle should be of same class and description and mechanically and technically there should not be much difference in between driving the said vehicles. A person who is proficient in driving a four wheeler cannot be said to be equally so in case of an auto rickshaw which is a three wheeler vehicle and which requires altogether different skills and maneuvering the same on the roads. Even though the auto rickshaw may be weighing less than 7500 kgs., which is a required weight of the vehicle to answer the description of it being Light Motor Vehicle still that cannot be said to be the vehicle of the same class or description. The balancing of the two vehicles while on road are altogether different. A three wheeler vehicle may not be effectively controlled as in the case of a four wheeler unless the driver thereof possess special skills therefor. Therefore, I find it difficult to hold that a person who is competent to drive four wheeler vehicles including Medium and Heavy Goods Vehicles can be said to have proficiency in driving an auto which is a three wheeler vehicle.

The next aspect of the matter is as to whether the compensation awarded by the Tribunal is just and reasonable. As already stated, the Tribunal awarded a sum of Rs.16,84,000/- as against the claim of Rs.22,00,000/-. The claimants did not prefer any appeal contending that they are entitled for any enhancement. The Insurance Company submits that the Tribunal erred in awarding the compensation by taking into consideration the future prospects at 30% which is not permissible.

The deceased was working as a teacher in Upper Primary School and PW.3 – the Mandal Education Officer speaks about the said aspect. The deceased died on 16.10.2008. In November, 2008, the Government issued Orders – Ex.X.2 granting interim relief at 15% which was subsequently subsumed in the Pay Revision Report. Therefore, there is discrepancy in the two certificates i.e., Ex.X.1 and Ex.A.7. Ex.A.7 shows the gross pay of the deceased at 11,911/- whereas Ex.X.1 shows the gross salary at Rs.21,278/-. PW.3 clarified this aspect by stating that from the month of the death of the deceased itself, 15% interim relief was added and hence the difference since the interim relief was sanctioned in the month in which the deceased died. Learned Counsel submits that there would not have been any enhancement in the earning prospects of the deceased at least for another five years. Therefore, at best, the future prospects that have to be added to the income of the deceased could have been taken at 15% which is applicable to the persons aged above 50 years. Since the deceased was aged about 45 years, till he attains the age of 50 years, there would not have been any increase in the emoluments of the deceased since only in the month in which he died, the salaries were enhanced. Therefore, the loss of future prospects can be determined at 15% but not 30% as has been done by the Tribunal.

However, it is noticed from the award that the Tribunal has taken the multiplier as '10.45' which is incorrect. Since the deceased was aged about 45 years and even if he is taken as a person in the age group of 46 to 50 years, the appropriate multiplier is '13' but not '10.45'. As stated above, the gross salary of the deceased was Rs.21,278/- and after deductions, his net salary is taken at Rs.15,000/- and 15% thereof is added, the income of the deceased comes to Rs.17,250/- per month or Rs.2,07,00-0/- per annum. This needs to be multiplied by '13'. It will come to Rs.26,91,000/-. If 1/3rd thereof is deducted towards personal expenses, the net figure would be about Rs.17,94,000/-. The Tribunal has only awarded Rs.16,84,000/- and since there is no appeal by the claimants, the same cannot be considered for enhancement. Therefore, the quantum of compensation determined by the Tribunal is liable to be confirmed subject however to the modification that the Insurance Company is liable to firstly satisfy the claimants and thereafter recover the same from the sixth respondent/owner of the vehicle, as stated above.

In the result, the appeal is disposed of confirming the award of the Tribunal granting compensation of Rs.16,84,000/- to the claimants and the appellant/Insurance Company is directed to satisfy the award and then recover the same from the sixth respondent/owner of the autorickshaw following the decision of the Supreme Court, referred supra.

M.S.K.Jaiswal, J

17th August, 2017
Dsr/smr