

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 1331 of 2010

JUDGMENT:

This appeal is arising out of Award dated 02.09.2009 passed in MVOP No.1805 of 2006 by the Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad (for short, 'the Tribunal'). This appeal is preferred by The New India Assurance Company Limited, the 2nd respondent in MVOP No.1805 of 2006.

2. Brief facts of the case are that on 21.05.2006, at about 4:30 PM, while the deceased was traveling in the jeep bearing No.AP 7M 2834 belonging to the 1st respondent, and when the jeep reached near Anupu Turning near Nagarjuna Sagar, the driver of the jeep had driven it in a rash and negligent manner, thereby the jeep turned turtle and the deceased fell down and sustained multiple injuries. He was treated in Government Hospital, Nagarjuna Sagar, Osmania Hospital, Hyderabad, and in Laxmi Nursing Home, Guntur, and he died on 06.06.2006 while undergoing treatment. Alleging that the accident occurred due to the rash and negligent driving by the driver of the jeep, the petitioner who is the legal representative of the deceased, filed the claim petition claiming compensation of Rs.1,50,000/- against respondents 1 and 2, the owner and the insurer of the crime jeep.

3. The respondent No.1, who is the owner of the crime vehicle, had remained ex parte. The respondent No.2, who is the insurer of

the crime vehicle, filed its counter disputing the age, income and the manner in which the accident took place, and alleged that the driver of the crime vehicle had no valid driving licence at the time of accident. It is also alleged that the Tribunal had no jurisdiction to entertain the petition, and sought to dismiss the petition.

4. Basing on the above pleadings, the Tribunal framed the following issues:

- (i) Whether the accident in question took place on 21.5.2006 at 4:30 PM due to rash and negligent driving of passenger jeep bearing No.AP 7W 2834?
- (ii) Whether the petitioner is entitled to compensation. If so, what amount and from whom?
- (iii) To what relief?

5. On behalf of the petitioner, PWs.1 to 4 were examined, and documents Exs.A1 to A6 were marked. On behalf of respondent No.2-insurer, RW1 was examined, and documents Exs.B1 and B2 were marked.

6. The Tribunal, on consideration of the evidence of PWs.1 to 4, and RW1, and the documents Exs.A1 to A6 and Exs.B1 and B2, awarded compensation of Rs.1,50,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realization, against respondents 1 and 2, the owner and the insurer, holding them jointly and severally liable to pay the compensation.

7. Heard learned counsel for the appellant-insurance company, and the learned counsel for the respondent-claimant.

8. Learned counsel for the appellant contended that even though the driver of the crime vehicle did not possess valid and effective driving licence at the time of accident, the Tribunal awarded compensation fastening liability to the owner and insurer jointly and severally. He contends that as the driver had no valid and effective driving licence at the time of accident, the insurer is not liable to pay any compensation. He further contends that on enquiry of the photocopy of the alleged driving licence of Mr. Laxman, who was the driver of the crime vehicle at the time of accident, the RTA office, Nalgonda, has stated vide their letter-Ex.B2 that no such driving licence is existing either in their computer or manual records. Learned counsel submits that in case this Court is inclined to consider the photocopy of the driving licence of the driver of the crime vehicle, pay and recovery may be ordered in this case.

9. Learned counsel for the respondent-claimant contended that the Tribunal held that the driver of the crime vehicle had valid driving licence. Learned counsel further contended that the contention of the insurer that the driver had no valid driving licence at the time of accident was rejected by the Tribunal.

10. In fact, RW1 who is the Assistant Manager of the 2nd respondent-Insurance company, deposed that as per the photocopy of driving licence of Mr. K. Laxman, S/o Yelamanda, who was the driver of the crime vehicle at the material time of accident, was authorized to drive MCWG and LMV non-transport, but he drove the crime vehicle-Jeep, for carrying passengers on hire, without

possessing authorization to drive the same. He further deposed that while verifying the validity of the said driving licence, the RTA office, Nalgonda, informed that there is no licence with number 6551/NGL/1999 in the name of Mr. Laxman, S/o Yelamanda, R/o Durgi, either in the computer or in the manual records, and the RTA, Nalgonda has issued a letter to that effect. Ex.B2 is the said letter.

11. It is obvious that a Xerox copy of a driving licence of Mr. Laxman, who was the driver of the crime vehicle at the time of accident, was filed before the Tribunal. As per the deposition of RW1, the RTA Nalgonda, vide Ex.B2-letter, has stated that there is no such licence in the name of Mr. Laxman in their office records. The trial Court, having found in paragraph 7 of the impugned Award, that though there is conflict between Ex.A5-MVI report, and Ex.B2-RTA letter, since a form of licence was also filed along with Ex.B2 showing the driving licence of one K. Laxman, assumed that the driver of the crime vehicle was having valid licence.

12. The dispute is in narrow compass, which is with regard to the genuineness of the driving licence. In view of conflict between Ex.A5 and Ex.B2, and the validity of the driving licence being seriously disputed, which is a question of fact, the Tribunal is directed to verify again with the concerned RTA authorities to come to a conclusion whether the driving licence filed before the Tribunal is a genuine one or a fake one. In case the driving licence is genuine and valid, the owner and insurer would naturally be jointly and severally liable to pay the compensation, whereupon it would be open to the claimant to execute the award against either the owner or the insurer.

13. In view of the question of fact, I deem it appropriate to remit the matter to the Tribunal, for the limited purpose of examining the genuineness or otherwise of the driving licence, and pass appropriate orders in the MVOP No.1805 of 2006, within four weeks from the date of receipt of a copy of this order.

14. In the result, the matter is remitted to the Tribunal with the above direction. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

19th April, 2017

KSM



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