THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 2124 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the United India Insurance Company Limited, represented by its Branch Manager, Hyderabad, who is respondent No.2 in O.P. No.2688 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional Metropolitan Sessions Judge-cum-XIX Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal'), aggrieved by the order dated 19.06.2006, whereby and whereunder, the Tribunal awarded an amount of Rs.2,52,500/-, as against Rs.5,00,000/- claimed by respondent Nos.1 to 5 herein for the death of one T.Bishan Singh (deceased) in a motor accident occurred on 13.07.2003. Respondent Nos.1 to 5 herein are the wife, children and mother of the deceased.

2. The appellant herein, who is the insurer of the crime vehicle Kinetic Honda bearing registration No.AP 12A 4312, is respondent No.2, while respondent Nos.1 to 5 herein, who are the wife, children and mother of the deceased, are the petitioners, and respondent No.6 herein, who is owner of the crime vehicle, is respondent No.1 in the original petition before the Tribunal.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts would show that on 13.07.2003, the deceased and his friend went for evening walk from their residence and when they reached IICT Gate at 5-30 p.m., a Kinetic Honda bearing registration No.AP 12A 4312, driven by its driver in a rash and negligent manner at high speed, came from behind and dashed against the deceased, due to which, he sustained injuries and immediately, he was shifted to New City Hospital, Secunderabad, and he succumbed to the injuries on 16.07.2003. It is stated in the claim petition that the deceased was earning Rs.10,000/- per month through consultancy which was set up by him after his voluntary retirement as Deputy Manager in HMT and he was contributing the same to his family and due to his sudden demise, all the claimants lost their bread earner. Therefore, petitioner Nos.1 to 5 claimed Rs.5,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the aforesaid Kinetic Honda.

5. Respondent No.1-owner of the crime vehicle remained *ex parte* before the Tribunal. Respondent No.2-insurer filed counter denying the averments made in the petition and pleaded that the there was no negligence on the part of the driver of the crime vehicle.

6. The Tribunal after considering the evidence of P.Ws.1 and 2, R.Ws.1 and 2, and the documents Exs.A.1 to A.6 and Exs.B.1 to B.4, determined compensation as Rs.2,52,500/- and granted the same with interest at the rate of 7% per annum from

the date of petition till realisation against both the respondents by order dated 19.06.2006.

7. Aggrieved by the said order, respondent No.2-insurer preferred the present appeal and contended that the Tribunal erred in taking income of the deceased at Rs.3,000/- though there is no evidence regarding his income or avocation; the Tribunal erroneously awarded Rs.25,156/- towards medicines without any oral evidence to prove the medical bills; the Tribunal failed to see that the driver of the kinetic Honda did not have any valid driving licence, which is a breach of conditions of insurance policy and therefore, the insurance company is not liable to pay compensation; and finally, prayed to allow the appeal by setting aside the order and decree under challenge passed against the insurer of the crime vehicle.

8. Heard the learned counsel for the appellant-insurance company and the learned counsel appearing on behalf of respondent Nos.1 to 5, who are petitioners in the original petition, apart from perusing the material available on record. The appeal against respondent No.6-owner of the crime vehicle was dismissed on 05.07.2016 for default. However, dismissal of the appeal for default against the respondent No.1-owner of the vehicle is of no consequence to decide this appeal.

9. It is evident from the record that P.Ws.1 and 2 were examined and Exs.A.1 to A.6 were marked on behalf of the petitioners and, on behalf of respondent No.2-insurer, R.Ws.1 and

2 were examined and Exs.B.1 to B.4 were marked. There is clear evidence of P.W.2 that he was accompanying the deceased at the time of accident and P.W.2 spoke about the rashness and negligence on the part of the driver of the kinetic Honda and dashing the deceased and causing death due to the injuries. Ex.A.1-certified copy of F.I.R., Ex.A.2-certified copy of charge sheet, Ex.A.3-certified copy of inquest report and Ex.A.4-certified copy of post-mortem examination report reveals the same. Ex.A.5-certified copy of Motor Vehicles Inspector's report reveals that there was no mechanical defect in the accident vehicle. Nothing is brought on record to disbelieve the evidence of P.W.2. The Tribunal also rightly came to the conclusion that the accident occurred only due to the rash and negligent manner on the part of the driver of the kinetic Honda bearing registration No.AP 12A 4312.

10. The petitioners have claimed compensation of Rs.5,00,000/-, but the Tribunal has granted an amount of Rs.2,52,500/- relying on the age and monthly income of the deceased. The Tribunal has taken the age of the deceased as 50 years and the multiplier '8' and monthly earnings of the deceased as Rs.3,000/-, deducted 1/3rd therefrom towards personal living expenses of the deceased, taken the contribution of the deceased to the family as Rs.2,000/- and determined the compensation towards loss of future income of the deceased as Rs.1,92,000/- (Rs.2,000/- x 12 x 8). In addition, the Tribunal also granted Rs.15,000/- towards loss of consortium to petitioner No.1-wife, Rs.5,000/- towards loss of love and affection and Rs.25,156/- towards medical

expenses. Though the petitioners stated that the deceased was dealing with real estate business, no evidence is placed. Therefore, the Tribunal held that the deceased was earning Rs.3,000/- per month and determined the compensation. As seen from the order of the Tribunal, the Tribunal had given elaborate reasons for taking the earnings of the deceased as Rs.3,000/- and the multiplier '8' and the said finding is based on the oral and documentary evidence. Therefore, the compensation determined by the Tribunal is just and reasonable.

11. There is no evidence of driver or owner violating the terms and conditions of the insurance policy, marked as Ex.B.2, wherein the crime vehicle is validly insured. Therefore, it is not just and proper to absolve the appellant-insurance company from its liability. Hence, there are no circumstances to take a different view in this appeal and the impugned order do not suffer from any infirmity.

12. Accordingly, this appeal is dismissed confirming the impugned order dated 19.06.2006 passed by the Tribunal in all respects. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 02.02.2017

siva