HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.4434 OF 2004

JUDGMENT:

The present appeal is preferred by Respondent No.2 - M/s. Oriental Insurance Company Limited in O.P. No.171 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - I Additional Chief Judge, City Civil Court, Secunderabad (for short 'Tribunal') under Section 173 of the Motor Vehicles Act, 1988, aggrieved over the order and decree, dated 23.08.2004, whereby and where-under a sum of Rs.4,14,000/- was awarded towards compensation for the death of one R. Narasimulu, husband of petitioner No.1, father of petitioner Nos.2 to 6 and son of deceased petitioner No.7, with interest at 9% per annum.

2. Respondent No.8 and the appellant herein, who are owner and insurer of Lorry bearing registration No.ABT 4809, respectively, are respondent Nos.1 and 2 in the aforesaid O.P., while respondent Nos.1 to 7 are the petitioners.

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

4. The main ground, on which the order is challenged by the Insurer is, that the accident vehicle itself is not insured with it and, in fact, no insurance policy is filed and the policy number is not even mentioned in the claim petition. The Tribunal ignoring the same,

somehow, awarded the amount and, therefore, there is patent illegality in the order passed by the Tribunal mulcting liability on respondent No.2 – Insurer, though, no obligation arises to indemnify the owner of the vehicle, respondent No.1, despite leading satisfactory evidence on that aspect of the case by examining RW.1.

5. Heard Sri A. Krishnam Raju, learned standing counsel for the appellant - Insurer, and Sri P. Giri Krishna, learned counsel for respondent Nos.1 to 6 - petitioners. Respondent No.7 is no more, of course, died during pendency of claim petition as the same is recorded in the cause title of O.P. No.171 of 2000. The appeal was dismissed against respondent No.8, owner of the vehicle, on 04.02.2011.

6. Now, the short point that arises for consideration is:

> Whether the vehicle involved in the accident is covered by the Insurance Policy issued by the appellant - Insurer?

7. Before the Tribunal, the following three issues were settled for trial basing on the pleadings put forth by the petitioners and respondent No.2.

"
1. Whether the accident has taken place due to rash and negligent driving of the lorry bearing No.ABT 4809 by its driver?
2. What is the just amount that can be awarded as compensation and against whom?
3. To what relief? "

8. Respondent No.1, owner of the vehicle remained *ex parte*. During inquiry, PWs.1 and 2 were examined and Exs.A-1 to A-5 were marked on behalf of the petitioners. On behalf of respondent No.2, Assistant Administrative Officer of respondent No.2's company was examined as RW.1, but no documents were marked.

9. Perused the order passed by the Tribunal. The Tribunal while referring to the evidence of RW.1 basing on Motor Vehicle Inspector's (MVI) report marked as Ex.A-4 and basing on the answer given by RW.1 to the effect that the vehicle was insured with Oriental Insurance Company, but policy number given in Ex.A-4 does not belong to their company, still, held that the appellant is liable to pay the compensation. For better appreciation, it would be appropriate to extract the answers given by RW.1 in his cross-examination which are thus:

> " I was not given any authorization by our company to depose on behalf of R.2 company. As per Ex.A.4 M.V.I. Report the vehicle, the 1st respondent is having permit to ply the vehicle on the road. The permit is valid up to 28-6-1998. It is true that as per Ex.A.4 the driver of the vehicle involved in the accident is having valid driving licence. It is true that it is mentioned in Ex.A.4 that the vehicle involved in the accident is insured with Oriental Insurance Company. The witness adds that the policy number given in Ex.A.4 does not belong to our company. (Oriental Insurance Company). It is not true to suggest that to avoid our liability to pay compensation I am falsely deposing that the policy No. given in Ex.A.4 does not belong to the 2nd respondent insurance company. It is not true to suggest that I am not competent or authorized to give evidence on behalf of the 2nd

respondent. It is not true to suggest that the policy mentioned in Ex.A.4 is issued by our company and that our company is liable to pay compensation to the petitioners."

10. The copy of insurance policy was not filed by the petitioners and no details have been mentioned. It is not known how the Motor Vehicle Inspector got the particulars as to the policy number he has given in Ex.A-4. When RW.1 was specifically denied that the policy number mentioned in Ex.A-4 does not belong to their Insurance Company, the Tribunal, in fact, ought to have insisted to summon either the Motor Vehicle Inspector or owner of the vehicle though, he remained *ex parte*. In such an event, certainly, it is difficult to accept the case of the petitioners or the insurer. Thus, in the circumstances, the evidence of M.V.I. is absolutely indispensable. When in the cross-examination of RW.1, the relevant particulars have been confronted to RW.1 which are occurring in Ex.A-4 issued by M.V.I., who is also a public servant, in case, the particulars mentioned by MVI are incorrect, a duty is cast on the Insurer to summon the MVI and examine him as to on what basis he has recorded the policy number and name of the company as 'Oriental Insurance Company' against the relevant columns. The non-examination of MVI by the Insurer would give rise to an inescapable inference adverse to the case set out by the Insurer. Viewed from any angle, that ground agitated by the Insurer is without any satisfactory evidence. Itt is not as though that the petitioners have not mentioned

the policy number. In fact, in the cause title itself, they have given the policy number against description of respondent No.2.

11. Turning to the earnings of the deceased, the Tribunal has taken Rs.3,000/- as monthly earnings. The deceased was a vegetable vendor. The Tribunal has deducted 1/3rd towards personal living expenses of the deceased and taken balance towards contribution to the family, and applying multiplier '16' taking the age of the deceased as 35 years, which is, in fact, in accordance with the multiplier factor mentioned in the table formulated by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1], arrived at Rs.2,84,000/- towards loss of dependency. The Tribunal, in fact, if the law declared by the Hon'ble Supreme Court in **Sarla Verma**[1] and **Rajesh and others v. Rajbir Singh and others**[2], is applied, the amount awarded by the Tribunal would be somewhere nearer to the compensation that would be determined applying the legal principles. Certainly, the amount granted by the Tribunal cannot be construed as exorbitant or excessive. Therefore, even there is no merit in the said submission.

12. So far as the rate of interest is concerned, the Tribunal awarded it at 9% per annum. In view of the decision in **Rajesh**[2], the rate of interest is reduced to 7.5% per annum from 9% per annum granted by the Tribunal.

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1. 2009 ACJ 1298
2. 2013 ACJ 1403

13. The present appeal is, therefore, allowed in part only to the extent indicated in the above while affirming the order and decree passed by the Tribunal in all other respects. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal shall stand closed.

A. SHANKAR NARAYANA, J

September 12, 2017
Mgr