THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 1655 OF 2010

JUDGMENT:

This appeal is filed by the appellant/Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 05.01.2010 passed by the Chairman, Motor Accident Claims Tribunal-cum-XX Addl. Chief Judge, City Civil Court, Secunderabad, in O.P. No.384 of 2006 awarding compensation of Rs.6,04,000/-

2. The respondent Nos. 1 to 4 herein, who are claimants filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.8,00,000/- on account of death of the deceased Narsing Rao, in a motor vehicle accident.

3. For the sake of convenience, the parties are referred to as arrayed in the O.P. before the Tribunal.

4. The brief averments made in the petition are as follows:

On 17.06.2006 at about 10.00 p.m. while the deceased was proceeding on Pulsar bearing No. AP-24/F-7832, as pillion rider from Ganj Market towards Vanjera Vada on the extreme left side of the road with due diligence, and when the Pulsar reached near Hyderabad Chowrasta at Bhongir, suddenly an auto bearing No.AP-24/V-7873 came in a rash and negligent manner with high speed and dashed against the Pulsar as a result of which the deceased received head injury and other multiple fractures. Immediately he was shifted to Area Hospital, Bhongir and subsequently he was shifted to Gandhi Hospital, Secunderabad, but on the way he breathed his last. The Police, Bhongir registered a case in Cr. No. 95 of 2006 against the driver of the auto.

5. It is stated that the deceased was running a Kirana and General Stores in the name and style of M/s. Srinivasa Kirana and General Stores at Bhongir and was earning Rs.10,000/- per month and he was hale and healthy. Due to the sudden death of the deceased, the petitioners were put to mental shock and agony inasmuch as he was the only bread winner for the family. The petitioners, therefore, claimed compensation of Rs.8,00,000/- from respondent Nos. 1 and 2, who are owner and the insurance of the auto.

6. The respondent No.1, owner of the auto remained exparte.

7. The respondent No.2 filed counter putting the petitioners to prove the manner of accident, age, income, avocation of the deceased. It is further stated that the driver of the auto was not having a valid and subsisting driving licence and prayed to dismiss the petition.

8. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs.1 and 2 were examined and Exs. A-1 to A-5 were marked. On behalf of the

second respondent/appellant herein, Exs. B-1 and B-2 were marked.

9. On an overall appreciation of evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of auto bearing registration No. AP-24/V-7873 and awarded compensation of Rs.6,04,000/- against both the respondents along with interest at 7% per annum.

10. Aggrieved by the award passed by the Tribunal, the Insurance Company preferred the present appeal.

11. Learned counsel for the appellant argued that the driver of the auto was not having a valid and subsisting driver licence inasmuch as it expired on 04.08.2005 itself. He further argued that the quantum of compensation awarded by the Tribunal is high and excessive and prayed the court to exonerate the appellant from the liability.

12. On the other hand, learned counsel for the respondents – claimants contended that after considering oral and documentary evidence, the Tribunal has awarded just and reasonable compensation and the appellant/insurance company has not made out any case to set aside the award impugned herein and prayed to dismiss the appeal.

13. Having regard to the submissions made by both the learned counsel, the point that arises for consideration is

whether there are any grounds to interfere with the judgment and decree passed by the Tribunal?

14. A perusal of both oral and documentary evidence shows that the accident occurred due to rash and negligent driving of the driver of the auto bearing No. AP-24/V-7873 and the said finding needs no interference.

15. Coming to the quantum of compensation, the respondents/petitioners produced oral evidence of PWs. 1 and 2 and got marked Exs. A-1 to A-5 and after considering the evidence, Tribunal has rightly awarded compensation to the petitioners and the appellant/insurance company has failed to produce any evidence to disbelieve the evidence of PWs. 1 and 2. Therefore, the compensation awarded to the respondents/claimants is just and reasonable and the said finding also needs no interference in this appeal.

16. Insofar as liability of the appellant/insurer to pay the compensation is concerned, it is contended by the learned counsel for the appellant that the driver of the auto was not having a valid and subsisting driving licence at the time of accident inasmuch as it expired prior to the accident and, therefore, in view of violation of the policy conditions, the appellant/insurance company is not liable to pay any compensation.

17. In NATIONAL INSURANCE COMPANY LIMITED v. BALJIT KAUR AND OTHERS[1], the Hon'ble Apex Court, in para-21 of the said judgment, clarified that the decision rendered in *NEW INDIA ASSURANCE COMPANY LIMITED Vs. ASHA RANI (2003) 2 SCC 223,* has prospective effect for payment of compensation.

9. It would be appropriate to extract para-21 of the decision in BALJIT KAUR's case, which reads as under:

> "21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the 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. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the

[1] (2004) 2 SCC 1

vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding."

Therefore, in view of the law laid down by the Hon'ble Apex Court in BALJIT KAUR's case, the appellant/insurance company is directed to initially deposit the amount of compensation and recover the same from the owner of the vehicle i.e., fifth respondent herein without filing any civil suit, but it may initiate execution proceedings. The rate of interest as awarded by the Tribunal at 7% p.a. is affirmed.

Therefore, in view of the above discussion, the appeal is disposed of with the above observations. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE ANIS

1st September, 2017
MAS

THE HON’BLE SMT. JUSTICE ANIS

M.A.C.M.A No. 1655 OF 2010

Dated: 01st September, 2017

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