

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.686 of 2010
AND
CROSS OBJECTIONS (SR) No.8896 OF 2010

JUDGMENT:

The 2nd respondent—insurer among two respondents including owner of lorry bearing No.AP 16 U 6043, maintained the appeal impugning the award passed on 06.11.2008 in M.V.O.P. No.26 of 2005 on the file of Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati, (for short ‘the Tribunal’) which is maintained by the claimants, none other than wife and minor son of the deceased by name Gangulappa, aged about 45 years as per Ex.A3—post mortem report, under Section 166 of the Motor Vehicle Act, 1988 (for short ‘M.V. Act’) for compensation of Rs.4,90,000/- for the accidental death in the motor accident dated 23.05.2002 with the averments that at the time of accident Chinna Reddappa—PW,2 and deceased were travelling in the offending lorry with the load of stone pillars, due to rash and negligent driving of the driver of lorry of the 1st respondent insured with the 2nd respondent, it turned turtle and the stone pillars fell on the chest and legs of the deceased, who was succumbed therefrom and the Tribunal having held that the accident was the result of rash and negligent driving of the driver of lorry, awarded compensation of Rs.4,29,000/- with interest at 7.5% per annum with liability of the insurer to pay and recover saying the driver was not having valid license as on the date of accident since expired long back.

2) The contention of the learned standing counsel for insurer is that there is prima facie no license to the driver at the time of accident, which is deemed within the conscious knowledge of the owner in so permitting the driver, the insurer cannot be made liable in entrusting the vehicle to the driver who has with no license. Apart

from that the deceased was unauthorized passenger of the goods vehicle and there is nothing to say he is owner of the goods or engaged by the insured as workmen and fixing of liability even to the extent of pay and recovery by the Tribunal is unsustainable and the compensation awarded is otherwise excessive, hence to allow the appeal. Learned standing counsel for the insurer reiterated the same in the course of hearing.

3) Whereas it is the submission of the learned counsel for the respondents/ claimants that the Tribunal ought to have fixed joint liability and ought to have awarded compensation as prayed for before the Tribunal and the multiplier and multiplicand arrived are wrong and other conventional sums are also not granted, hence to allow the cross objections by enhancing the compensation as prayed for and prayed to dismiss the appeal.

4) Heard both sides and perused the material on record.

5) The factum of the accident was the result of rash and negligent driving of the driver of the lorry of the 1st respondent insured with the 2nd respondent covered by Ex.B1—policy is not in dispute. The factum of driver's license expired earlier to the accident and as on the date of accident he has no license at all, that is to say valid driving license for non-renewal within the statutory period since expired is also not in dispute. However, the only thing to be considered as rightly concluded therefrom, once the policy covers the risk otherwise in the absence of showing owner consciously knowing of the driver's license was expired and not chosen to renew. The owner deliberately and consciously despite expiry of the license entrusted the vehicle to a person, who has no license. In such an event, as per the settled law reiterated the principle laid down in **National Insurance Company**

Limited Vs. Swaran Singh & Others¹ even subsequently by the two judge bench expression of the Apex Court in **Kusum lata vs Satbir**², **S.Iyyappan Vs. United India Insurance Company**³, the pay and recovery direction of the tribunal as the insurer's liability covering the policy risk, if any, can be upheld.

6) Now coming to the other contention of the deceased was unauthorized passenger is concerned, the evidence of the owner of the vehicle--R1 as RW.2 that is also discussed by the Tribunal at para No.17 with reference to the claim petition pleadings at para No.1 is clear that the deceased was owner of the stone pillars that were loaded in the lorry, having been engaged by the driver with the permission of the owner.

7) A reading of Section 147 (1) (c) of the Act covers the risk even there is act policy for owner of goods apart from the policy covers the risk even passengers under IMT by collecting Rs.50/- that what the Tribunal considered. Once such is the case, the holding of the Tribunal that policy covered the risk also no way requires interference.

8) Now coming to the quantum of compensation, the accident was dated 23.05.2002. The Tribunal has taken the income of the deceased at Rs.3,000/- per month, as per **Latha Wadhwa vs State of Bihar**⁴ in the absence of proof of earnings minimum Rs.3,000/- to be taken as the accident occurred nearly one year after the expression, with proportionate increase Rs.3,100/- per month to be taken, if 1/3rd deducted towards personal expenses, it comes to Rs.2067/-, from the age of the deceased above 40 years, the multiplier applicable is '14.5' as

¹ (2004) 3 SCC 297=2004-ACJ-1

² AIR 2011 SC 1234

³ (2013) 7 SCC 62

⁴ AIR 2001 SC 3218

per ***Sarla Verma Vs Delhi Transport Corporation***⁵, it comes to Rs.3,59,658/- (Rs.2067/- X 12 X 14.5). Apart from it, the claimants are entitled to Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, Rs.10,000/- towards care and guidance to the minor child, total comes to Rs.4,54,658/- rounded to Rs.4,54,600/-. What the Tribunal awarded of Rs.4,29,000/- requires enhancement to Rs.4,54,600/-.

9) Accordingly and in the result, both the appeal and cross objections are allowed in part while enhancing the compensation from Rs.4,29,000/- (Rupees four lakhs twenty nine thousand only) to Rs.4,54,600/- (Rupees four lakhs fifty four thousand six hundred only) by reducing the multiplier from '16' to '14.5', however, by confirming the pay and recovery direction. In other respects the award of the Tribunal holds good. No order as to costs.

10) Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.03.01.2017
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⁵ 2009 ACJ 1298