THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A.No.2173 of 2009

JUDGMENT:

The appellant/2nd respondent aggrieved by the Award, dated 25.01.2008, passed by the Motor Accident Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Kadapa at Rajampet, in M.V.O.P.No.213 of 2006, preferred this appeal.

2. For the sake of convenience, the parties hereinafter referred to, as they are arrayed before the Tribunal.

3. Learned counsel for the appellant-2nd respondent Insurance company contended that Ex.A.6-policy does not cover the risk of the deceased as Lingalagari Narasaiah (hereinafter referred to, as 'the deceased') is not a third party; that as per the evidence of P.Ws.1 and 2 and Exs.A.1 and A.2, the deceased sat on the side of the driver of the auto without holding anything, as such there is negligence on the part of the deceased himself and hence, the insurance company is not liable to pay compensation.

4. On the other hand, learned counsel for the 1st respondent-petitioner contended that as per the evidence of P.W.2, who is an eyewitness to the accident, the accident has occurred due to rash and negligent driving of driver of auto bearing No.AP-24-U-2000 and that the deceased is a third party and Ex.A.6 covers the risk of the deceased and hence, he prays to dismiss the appeal.

5. The facts of the case, in brief, are as follows:

On 14.11.2001, the deceased boarded 1st respondent Auto bearing No.AP-24-U-2000 at his village to go to Rajampet and at about 8:00 AM, when the auto reached near Poli Yanadi colony on Chitvel-Rajampet, the driver of the auto drove the same in a rash and negligent manner with high speed without observing the pits on the road, due to which the deceased fell down from the auto and the left side back wheel ran over him, as a result of which the deceased received grievous injuries and he was shifted to Government Hospital, Rajampet, where the deceased died on the same day. A case in Crime No.87 of 2001 was registered by Mannur Police Station against the driver of the auto. The 1st respondent insured the auto with the 2nd respondent and the policy was in force at the time of accident.

The deceased was aged about 19 years and he was working as Bore well mechanic and earning Rs.3,500/- per month by the date of his death. The petitioner, who is mother of the deceased, filed a petition claiming compensation of Rs.2,00,000/-. The first respondent, who is owner of the auto bearing No.AP-24-U-2000 is liable to pay compensation to the petitioner and the 2nd respondent has to indemnify the liability from the second respondent.

6. The first respondent remained *ex parte*.

7. The 2nd respondent filed written statement denying all the material averments and putting the petitioner to strict proof that the accident has occurred due to rash and negligent driving of driver of the Auto bearing No.AP-24-U-2000 on 14.11.2001 at 8:00 pm on Rajampet-Chitvel main road. The deceased is son of the petitioner and the first respondent, the risk of the deceased is not covered under Ex.A6- policy as the deceased is not a third

party. The accident has occurred only due to negligence of the deceased who sat in the driver's seat along with driver and there is no negligence on the part of the driver of the Auto. The deceased was not a bore well mechanic and he was not earning Rs.3,500/- per month and he was depending on the income of the first respondent. At the time of accident, the policy was not in force. Hence, this respondent is not liable to indemnify the liability of the first respondent. The compensation claimed by the petitioner is high, excessive and baseless and the petition is liable to be dismissed.

8. The Tribunal framed the following issues for trial:

1. Whether the death of deceased Lingalagari Narasaiah S/o Lingalagari Narasimhulu occurred in a motor vehicle accident on 14.11.2001 at 8.00 a.m. near Poly Yanadi Colony on Rajampet to Chitvel road, Kadapa District due to rash and negligent driving by the driver of Bajaj Auto bearing No.AP-24-U-2000?
2. Whether the petitioner is entitled for compensation, if so, to what amount and from whom?
3. To what relief?

9. On behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.6 were got marked. On behalf of the respondents, no oral or documentary evidence was adduced.

10. Lingala Yanadamma, who is none other than mother of the deceased was examined as P.W.1 besides examining the eyewitness as P.W.2. P.W.1 deposed that the deceased died in a road accident on 14.11.2001 due to rash and negligent driving of driver of Auto bearing No.AP-24-U-2000. The first respondent, who is owner of the crime auto, is father of the deceased and husband of P.W.1.

During cross-examination, P.W.1 admitted that she is not an eyewitness to the accident. Since P.W.1 is not an eyewitness to the accident, it is necessary to rely on the evidence of P.W.2, who is an eyewitness to the incident. His evidence would go to show that on 14.11.2001 at about 08:00 am, he along with the deceased boarded Auto bearing No.AP-24-U-2000 at his village and when the said Auto reached near Poli Yanadi Colony, the driver of the auto drove the same in a rash and negligent manner with high speed without observing the pits on the road, due to which the deceased fell down from the auto and the left side back wheel ran over on him. He further deposed that the deceased sat on the front seat adjacent to the door. But, during cross-examination, he deposed that the deceased sat by the side of the driver of the auto. The driver seat is on front side and on the back there are two seats opposite to each other. The deceased sat on the seat in front of their back seat. The auto driver and one Gurivi Reddy sat on the driver seat. So, from the evidence of P.W.2, it is very clear that there are seats on the back of the driver seat opposite to each other. The deceased and another person sat in one seat and P.W.2 and another person sat in the opposite seats on the back of the driver, but not by the side of the auto driver. P.W.1 is not an eyewitness to the incident, her admission during cross-examination that the deceased sat by the side of the driver without any grip and fell down from the auto is only hearsay evidence, but not a direct evidence.

11. Ex.A.1 is certified copy of FIR and Ex.A.2 is charge sheet. As per Ex.A.1, P.W.2 lodged a complaint with the police. In Ex.A.1-

F.I.R, P.W.2 asserted that the deceased sat in the front seat on the door side. After completion of investigation, the Investigating Officer filed Ex.A.2 charge sheet, wherein it is stated that the deceased sat in the front seat of the auto on the left side. Therefore, as per Exs.A1 and A.2 and the evidence of P.W.2, it is clear that the deceased at the time of accident sat in the front seat of the auto on the left side, but not by the side of the auto driver. The finding of the Investigating Officer is that the driver of the auto drove the vehicle in a rash and negligent manner with high speed without observing the pits in the road, due to which the deceased fell down from the auto and sustained grievous injuries. Had the auto driver drove the vehicle with care and caution having observed the pits in the road, he should have avoided the accident. The Motor Vehicle Inspector, who visited scene, examined the auto and issued Ex.A.4 M.V.I report, opined that the accident was not occurred due to any mechanical defects of the auto.

12. The Tribunal having considered the oral evidence of P.W.2 and documentary evidence Exs.A.1, A.2 and A.4, rightly come to the conclusion that the accident was occurred due to rash and negligent driving of driver of auto bearing No.AP-24-U-2000, which was insured with the second respondent, and the said finding needs no interference by this Court.

13. The further contention of appellant-Insurance Company is that Ex.A.6-policy does not cover the risk of the deceased as the deceased is not a third party. The consistent evidence of P.W.1 is that the first respondent, who is none other than her husband, is owner of the Auto bearing No.AP-24-U-2000 and auto was insured

with the second respondent. But, the second respondent having taken a plea that Ex.A.6-policy does not cover the risk, did not choose to enter into the witness box and got examine any person that effect. A perusal of Ex.A.6 goes to show that the policy was issued on 29.12.2000 and it was in force from 29.12.2000 to 28.12.2001 and the accident occurred on 14.11.2001. Therefore, by which date, policy was in force. Therefore, the Tribunal having considered the evidence of P.Ws.1 and 2 coupled with documentary evidence of Ex.A.1 to A.6 came to the conclusion that P.W.1 who is none other than mother of the deceased and who is dependent on the deceased, is entitled to compensation. Since the deceased was aged about 19 years and unmarried, the Tribunal took age of the P.W.1 as 45 years and income of the deceased was taken at Rs.2,000/- per month and after deducting 1/3rd towards personal expenses of the deceased, awarded compensation of Rs.2,00,000/- against respondents 1 and 2.

14. In the facts and circumstances of the case discussed above, I find that the Tribunal having considered the oral and documentary evidence and marshal facts elaborately, came to the right conclusion that the accident has occurred due to rash and negligent driving of driver of auto, which was insured with the second respondent under Ex.A.6-policy, which was in subsistence, awarded compensation of Rs.2,00,000/- which needs no interference by this Court.

15. In the result, the appeal is dismissed with costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE N.BALAYOGI

Date: 22.09.2017
YVL

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A.No.2173 of 2009

Date:22.09.2017

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