THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.921 OF 2006

JUDGMENT:

Challenging the award dated 25.03.2005 passed in O.P. No.2015 of 2002 on the file of Motor Vehicles Accidents Claims Tribunal-cum-XIV Additional Chief Judge (FTC), City Civil Court Hyderabad (for short, 'the Tribunal'), the Insurance Company preferred the present appeal.

2. When the matter came up for hearing on 10.02.2007, there is no representation for the appellant, so heard the arguments of learned counsel for the respondents 2 to 4 and adjourned the matter to today under the caption 'For Orders'.

3. Heard learned counsel for the appellant – Insurance Company and the learned counsel for the respondent No.5, and perused the material available on record.

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

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

On 11.5.2002 while Mirza Munnawar Baig (deceased) was proceeding on foot from Ramkote cross-roads towards Boggulakunta at about 10.30 p.m., an auto bearing No.AP-13-W-1699 driven by its driver at high speed and in a rash and negligent manner, dashed Mirza Munnawar Baig. As a result of which, Mirza Munnawar Baig received grievous injuries and succumbed to death. A case in Crime No.101 of 2002 was registered against the driver of the crime vehicle for the offences punishable under Sections 304-A and 201 of I.P.C. It is stated that the deceased was aged about 55 years and a skilled worker and attending to puncture works of the vehicles and was earning Rs.4,000/- per month. He was the only bread-winner for his family, an application was filed claiming compensation of Rs.2,00,000/-.

6. The first respondent, owner of the vehicle, remained *ex parte* before the Tribunal. The 2nd respondent-Insurance Company filed counter disputing the age, income, avocation of the deceased and also the manner in which the accident took place.

7. Basing on the above pleadings, the Tribunal below framed the following issues:

(i) Whether the deceased Mirza Munnwar Baig died in motor accident due to rash and negligent driving of the offending vehicle by its driver?

(ii) Whether the petitioners are entitled to compensation, if so, to what amount and from whom?

(iii) To what relief?

8. In support of the claimants, P.Ws.1 & 2 were examined and Exs.A1 to A8 were marked. On behalf of the respondents, R.W.1 was examined and Ex.B1 was marked.

9. After considering the oral and documentary evidence available on record, the Tribunal below held that the accident took place due to rash and negligent driving of Auto bearing No.AP-13-W-1699 and awarded compensation of Rs.1,07,000/- with proportionate costs and interest at 9% per annum from the date of the petition till realization in favour of claimants and against the respondents 1 & 2. The compensation awarded shall be shared equally by the claimants. The said finding is challenged by the Insurance Company

10. The learned counsel for the appellant contended that there is inconsistency in the pleadings as well as in the evidence with regard to Auto bearing No.AP-13-W-1699 causing the death of Mirza Munnawar

Baig in an accident that occurred on 11.5.2002 at about 10.30 pm. A perusal of the evidence on record, Auto bearing No.AP-13-W-1699 belongs to one Police Constable by name Makhanlal, but as per the record the said Auto belongs to one N. Satyanarayana, the 5th respondent herein.

11. It is further contended that the Tribunal below held that the accident occurred due to rash and negligent driving of the driver of Auto has not been proved, and held that P.W.2, so called eye-witness, is a planted witness and further converting the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 to Section 163-A of the Motor Vehicles Act, ought to have granted only Rs.50,000/- as compensation. There is also inconsistency in the oral and documentary evidence with regard to owner of the vehicle in question and merely because the said vehicle being insured with the appellant, tagged the liability; and ultimately pray to set aside the award passed against the appellant - Insurance Company.

12. The learned counsel for the 5th respondent, owner of the vehicle, had supported the case of the appellant herein.

13. In view of the contentions put forth, the following points have come up for determination.

(i) Whether Mirza Munnawar Baig was died due to rash and negligent driving of the driver of Auto bearing No.AP-13-W-1699?

(ii) Whether the Appellant-Insurance Company may be absolved from its liability?

(iii) Whether the award passed by the Tribunal in O.P. No.2015 of 2002 granting compensation of Rs.1,07,000/- is liable to be set aside?

14. P.W.1 (claimant No.2) had clearly deposed the rash and negligence on the part of driver of the Auto bearing No.AP-13-W-1699 and his father Mirza Munnawar Baig dying in the said accident. Admittedly, he is not eye-witness to the occurrence of the accident. Through his evidence, Ex.A-1 – Certified copy of First Information Report in Crime No.101/2002 of Sultan Bazar P.S.; Ex. A-2 – Certified copy of Inquest Report, Ex.A3 – Post Mortem Report of his father and Ex.A4 – Death Certificate of his father. Ex.A5 - Passport of P.W.2. In cross-examination, he reiterated the same.

15. The evidence of P.W.2 is that he is an electrician and on 11.5.2002 at 10.30 pm. while he was standing at the shop he saw the deceased Mirza Munnawar Baig proceeding by foot on road at Ramkote towards Boggulakunta, one Auto-rickshaw bearing No.AP-13-W-1699 came in a rash and negligent manner and dashed the deceased in a high speed, as a result of which Mirza Munnawar Baig suffered grievous injuries on his head and blood was oozing from the injuries.

16. The contention of the appellant is that Auto bearing No.AP-13-W-1699 did not cause any accident and further contended that P.W.2 is not an eye-witness to the occurrence of the accident. A perusal of Ex.A1-Certified Copy of First Information Report reveals that the driver of Auto lodged a report with the police and he has narrated the occurrence of the accident and death of Mirza Munnawar Baig.

17. R.W. 1- K.S. Murthy, employee of Insurance Company and he is also not an eye-witness to the occurrence of the accident. As per Ex.A3 – certified copy of Postmortem report the deceased died due to multiple injuries and those injuries are possible in a motor accident. As per Ex.A2- Certified copy of Inquest report, the deceased died in this case is

due to rash and negligent driving of the driver of Auto bearing No. AP-13-W-1699.

18. Learned counsel for the appellant-Insurance Company contended that P.W.2 in his cross-examination stated that on hearing sound, he proceeded to the spot and in chief-examination he stated that he was at a shop. This is contradicting. In the chief-examination, P.W.2 stated that at the time of occurrence of the accident he was standing at the shop, he saw the deceased proceeding on foot. Merely because, he stated that on hearing sound he went to the accident spot, it cannot be said that P.W.2 was not an eye-witness to the occurrence of the accident. Under Ex.A1, there is a clear specific mention of the Auto driver causing an accident and he himself lodging a report with the police and the First Information Report lodged for the offences under Sections 304-A and 201 of IPC. The appellant or the owner of the Auto did not rebut the above evidence. There is ample evidence to believe that the accident and death caused due to rash and negligent driving of Auto bearing No.AP-13-W-1699 by its driver. There are also other documents i.e., Ex.A7- certified copy of scene of offence panchanama and Ex.A8 – charge-sheet to show that the driver of Auto bearing No.AP-13-W-1699 had caused the death of the deceased due to rash and negligent driving of auto in question.

19. The Tribunal had not properly analyzed the evidence on record and came to an erroneous conclusion that P.W.2 is a planted witness and in changing the claim petition from Section 166 of Motor Vehicles Act to Section 163A of the Motor Vehicles Act.

20. It is evident from the record that the respondents 2 to 4 are the dependants of the deceased Mirza Munnawar Baig and ultimately the Tribunal granted compensation of Rs.1,07,000/- assigning various reasons.

21. As seen from the entire evidence on record, including the clear evidence of R.W.1, that the Auto bearing No.AP-13-W-1699 is insured with the appellant - Insurance company and there was valid insurance on the date of the accident. The deceased in this case is a third party. There is no evidence to believe that the driver of Auto bearing No. AP-13-W-1699 had violated the terms and conditions of policy, marked as Ex.B1.

22. Merely because there is a mention in the First Information Report that the said Auto belongs to Police Constable Makhanlal, but there is ample evidence to believe the owner of the auto is N. Satyanarayana, who is respondent No.1 in claim petition.

23. In view of the facts and circumstances of the case, it can be safely concluded that Mirza Munnawar Baig died due to rash and negligent driving of the driver of Auto bearing No.AP-13-W-1699, there are no violations of terms and conditions of policy marked as Ex.B1, the Tribunal granted just and reasonable compensation of Rs.1,07,000/- with 9% interest per annum from the date of petition till the date of realization in favour of the respondents 2 to 4 (claimants in O.P.).

24. Thus, all the points are answered in favour of the respondents 2 to 4 / claimants and against Appellant – Insurance Company, accordingly impugned order is modified.

25. There are no merits in the Appeal and the same is dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. Shameem Akther, J

Dt. 17.02.2017
GBS