THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.852 of 2010

JUDGMENT:

This appeal is arising out of the order dated 01.12.2009 passed in O.P.No.636 of 2008 on the file of the Motor Vehicle Accidents Claims Tribunal-cum-III Additional District & Sessions Judge (FTC), Medak.

2. The appellant is the 2nd respondent. Respondents 1 to 3 are the petitioners-claimants, who filed the said O.P. under Section 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/- on account of the death of the deceased, Lingagalla Ramaiah, in a motor vehicle accident. 4th respondent, who is the owner of vehicle, is the 1st respondent in the said O.P.

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

4. The brief facts of the case are that, 1st petitioner is the wife, 2nd petitioner is the son and 3rd petitioner is the daughter of the deceased. On 20.10.2006 at about 8:00 A.M., when the deceased was returning to his village Chitkul on his scooter bearing No.AEU-8183 and when he reached near Anna sagar Village tank, one auto bearing No.AP-23-W-0147 came in opposite direction driven in a rash and negligent manner and dashed the scooter of the deceased, due to which, the deceased sustained grievous injuries to his hands, legs, head and other parts of the body. Immediately, he was shifted to Government Hospital, Jogipet. While undergoing treatment, the deceased died. The police, Jogipet registered a case in Crime No.131 of 2008 under Section 304-A IPC against the driver of the auto.

5. Respondent No.1 filed counter denying the occurrence of the accident and involvement of the crime vehicle. He is the driver-cum-owner of the auto. He stated that his auto was duly insured with respondent No.2-Insurance Company and the policy was in force by the date of accident. In case, if compensation is awarded, the same may be payable by the 2nd respondent-Insurance Company, as the vehicle was insured with the said insurance company. The 2nd respondent-Insurance Company filed counter denying the allegations in the petition and the petitioners are put to strict proof of the age, occupation and income of the deceased and that the deceased died due to the injuries sustained by him in the accident. The Tribunal, on consideration of oral and documentary evidence, awarded compensation of Rs.3,29,000/-.

6. Heard both sides and perused the material on record.

7. Learned counsel for the appellant-Insurer submits that the driver of the crime auto was not having valid and effective driving licence. The driver drove the auto under the supervision of senior driver at the time of accident is an after thought and there was no evidence or a plea taken by him at the first instance in the counter. The Insurer got issued a legal notice to the owner of the auto for production of necessary documents, but he was not produced the same. As the accident occurred due to the rash and negligent driving of the driver of the auto, the Insurer is not liable to pay any compensation, but the Tribunal held that the insurer is liable for payment of compensation.

8. Learned counsel for the respondents submits that the driver of the auto had learner's licence by the time of accident and he drove the vehicle

under the supervision of expert driver. Therefore, there is no violation of terms and conditions of insurance policy.

9. The evidence of R.W.1, who is the owner-cum-driver of the auto, reveals that he was responsible for the said accident and he had learner's licence by the time of accident and he drove the auto under the supervision of expert driver. The Insurer got examined Legal Executive as R.W.2 on its behalf. The testimony of R.W.2 reveals that auto was duly insured with the Insurer by the date of accident and the policy was in force. It is also reveals from his evidence that the driver of the auto was having valid learner's licence by the time of accident. It is also revealed in his cross-examination that by the date of accident, two persons were travelling in the auto. One person is a senior driver and the other person is R.W.1. This fact clearly shows that R.W.1 was holding a learner's licence and he was driving the vehicle under the supervision of one senior driver.

10. As a matter of fact, the burden is on the Insurer to prove that the driver of the crime vehicle was not having valid driving licence by the date of accident. No doubt, it is clear from the evidence on record that the driver of the crime vehicle was having learner's licence and he drove the vehicle under the supervision of senior driver. In this regard, the Tribunal observed that as per Ex.B3 insurance policy, holder of learner is authorized to drive the vehicle under the duly licenced holder. Therefore, there is no violation of terms and conditions of insurance policy and I do not see any valid grounds to interfere with the findings of the Tribunal.

11. Learned counsel for the appellant submits that the Tribunal has taken the income of the deceased as Rs.100/- per day. The deceased was a labourer and there is no proof for his income.

12. Learned counsel for the respondents submits that as per minimum wages, the income of the labourer can be taken as Rs.3,000/- per month.

13. It is obvious that the Tribunal has fixed correct income at Rs.100/- per day i.e., Rs.3,000/- per month, which usually a labourer earn in an unorganized sector. Therefore, I do not see any illegality or irregularity in the finding of the Tribunal in fixing the notional income of the deceased at Rs.3,000/- per month and I do not see any ground to interfere with the order passed by the Tribunal.

14. In the result, the appeal is dismissed and the award passed by the Tribunal is confirmed. No costs. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE GUDI SEVA SHYAM PRASAD

23rd March, 2017
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