

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 1196 of 2013

JUDGMENT:

This appeal is filed by United India Insurance Company Limited, under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the order dated 02.03.2013 passed by the Motor Accidents Claims Tribunal-cum-III Additional District Judge (F.T.C), at Gadwal, in O.P. No.517 of 2008.

2. For the sake of convenience, the parties will be referred to as they were arrayed before the Tribunal.

3. Originally, Salguti Mohan Reddy (who was the injured in the motor vehicle accident) filed a claim petition under Section 166 of the Motor Vehicles Act, claiming compensation for the injuries suffered by him in the accident. Subsequently, during pendency of the claim petition, Salguti Mohan Reddy died, and consequently his legal representatives, who are petitioners 2 to 4, filed an amended claim petition claiming compensation of Rs.10,00,000/- on account of the death of the deceased due to the injuries sustained by him in the accident.

4. Brief facts of the case are that on 01.07.2008, at about 7:00 AM, the deceased left Marikal village in a tractor and trailer bearing Nos.AP-22W-4848, and AP-22W-4849, along

with labourers and loaded bricks near Gollamallaiah of Marikal village. While returning, after crossing IVRCL camp, the deceased stopped his tractor by the side of the road. Meanwhile, one lorry bearing No.MH-34M-6977 driven by its driver in a rash and negligent manner dashed against the tractor. As a result, the deceased sustained fracture and grievous injuries all over the body. He was shifted to Government General Hospital, Mahabubnagar, and from there he was shifted to SVS Medical College, Mahabubnagar, for treatment. The Marikal Police registered a case in Crime No.47 of 2008 against the driver of the crime lorry, for the offences punishable under Sections 338 and 279 IPC. The deceased died on 10.10.2011 due to the injuries sustained by him in the accident. Stating that the deceased used to earn Rs.50,000/- per annum by doing agriculture, and that he incurred Rs.3,00,000/- towards medical treatment; and alleging that the deceased died due to the injuries sustained in the accident that occurred due to the rash and negligent driving by the driver of the crime lorry, the petitioners filed the claim petition claiming compensation of Rs.10,00,000/- against respondent Nos.1 and 2, who are the owner and insurer, of the crime lorry.

5. Respondent No.1-Owner of the crime vehicle remained ex parte.

6. Respondent No.2-Insurer filed counter denying the manner in which the accident took place, the income of the deceased, the injuries sustained by him and the expenditure incurred by him for treatment. It is averred in the counter that the deceased died a natural death and that his death was not due to the alleged injuries in the accident. It is also averred that the driver of the crime vehicle did not possess valid and effective driving licence to drive the crime lorry, and that the respondent No.1-Owner of the crime lorry, knowing well that the driver had no valid and effective driving licence to drive the crime vehicle and, therefore, it is violation of terms and conditions of the insurance policy. It is further averred that driver of the tractor-trailer did not possess valid driving licence, and that he stopped the tractor-trailer on the middle of the road without observing traffic rules, and that the owner and insurer of the tractor-trailer are proper and necessary parties to the claim petition. It is further averred that the accident occurred due to the negligence of the driver of the tractor-trailer and that there is no negligence on the part of the driver of crime lorry.

7. Based on the above pleadings, the Tribunal framed the following Issues and Additional Issues, for trial:

Issues:

- (i) **Whether the incident happened due to rash and negligent driving of the driver of lorry bearing No. MH-34M-6977.**

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

(iii) To what relief?

Additional Issues:

(i) Whether the petitioner No.1 died due to injuries sustained in the accident.

(ii) Whether the petitioners 2 to 4 are entitled to compensation amount, If so, from whom and to what amount.

8. On behalf of the petitioners, PWs.1 to 3 were examined, and documents Exs.A1 to A21 were marked. None was examined on behalf of the 2nd respondent-Insurance company, except marking Ex.B1-copy of insurance policy.

9. The Tribunal, on consideration of the oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the crime lorry bearing No.MH-34M-6977 and awarded compensation of Rs.4,32,000/- with proportionate costs and future interest at 7.5% per annum from the date of petition till realisation, making respondent Nos.1 to 2 jointly and severally liable to pay the compensation. Aggrieved by the order passed by the Tribunal, the Insurance company filed this appeal.

10. Heard Sri Naresh Byrapaneni, learned counsel for the appellant-insurance company, and Sri Ashok Kumar, learned counsel for the respondents-claimants.

11. Learned counsel for the appellant-insurance company contended that the deceased did not die due to the injuries sustained by him in the accident, and that the death occurred three years after the accident and therefore there is no nexus between the injuries and the death of the deceased.

12. The Tribunal has thoroughly discussed the evidence of the medical officer and the witnesses by taking into consideration the medical records and the documents and arrived at a conclusion that the deceased died due to the injuries sustained by him in the accident. The death was not a natural death. It is also observed by the Tribunal that the respondents did not produce any evidence to show that the deceased died a natural death. On these findings, the Tribunal has awarded compensation on account of the death of the deceased in the accident.

13. The observation of the Tribunal in paragraph 14 in respect of Additional Issue No.(i), is relevant, and is extracted below:

“14. Additional Issue No.1: Whether petitioner No.1 died due to injuries sustained in the incident.

On issue No.1 it is held that the petitioner No.1 sustained injuries in the incident. From Ex.A1 it is clear that the incident happened on 1.7.2008. Ex.A3 is the certified copy of wound certificate of the petitioner No.1 issued by Civil Asst. Surgeon, Govt. Area Hospital, Mahabubnagar. In Ex.A3 wound certificate it is mentioned that the petitioner sustained the following injuries.

1. Laceration on oxypital region.
2. Abrasion on the bridge of nose.

It is also mentioned in the Ex.A3 that the petitioner was treated at SVS Hospital from 1.7.2008 to 23.7.2008 for severe head injury and other injuries. Ex.A5, A6, A7, A8 are discharge summaries of the petitioner No.1 issued by SVS Hospital, Mahabubnagar.

As seen from Ex.A5 the deceased petitioner No.1 has been admitted in SVS hospital, Mahabubnagar on 1.7.2008 and was discharged on 23.7.2008, Ex.A6 discharge summary of SVS hospital, Mahabubnagar shows that the deceased petitioner No.1 was admitted in hospital on 12.3.2009 and was discharged on 13.3.2009, Ex.A7 discharge summary shows that the deceased petitioner No.1 was admitted in SVS hospital on 21.5.2009 and was discharged on 23.5.2009. Further Ex.A8 discharge summary of SVS hospital Mahabubnagar shows that the deceased petitioner No.1 was admitted on 9.1.2011 and was discharged on 12.1.2011. In view of Ex.A5 to A8 it can be said that the deceased petitioner No.1 took treatment continuously.”

14. PW2 is the doctor who treated the injured on 01.07.2008. He conducted operation for the brain of the deceased and discharged him on 23.07.2008. Again he was admitted to hospital on 12.03.2009 and was discharged on 13.03.2009. Again he was admitted on 01.05.2009 and was discharged on 23.05.2009. Again he was admitted on 09.01.2011 and discharged on 12.01.2011. The testimony of PW2 reveals that the deceased was suffering from severe physical and mental disability and was confined to a wheelchair, and he was on medication for life. PW2 has clearly stated that, in his opinion, the cause of death of the deceased was because of complications related to head injury he sustained in road accident in the year 2008. His evidence further reveals that the deceased was under

treatment till 12.01.2011, i.e., just nine months prior to his death.

15. PW2 is the medical officer and his evidence is trustworthy. The evidence of medical officer clearly reveals that the deceased had received head injury and undergone an operation and thereafter complications arose out of the head injury he sustained in the accident and he was admitted in hospital several times for treatment. PW2 has clearly stated that the complications developed due to the head injury sustained by the deceased in the accident in the year 2008 led to the death of the deceased.

16. The deceased was about 45 years old by the date of accident. He died within three years of the accident. Admittedly, he received a head injury and undergone an operation. PW2 clearly stated that the death occurred due to the complications that arose out of the head injury. PW2 is competent to say about the cause of the death. It is PW2 who conducted operation for the brain of the deceased and, subsequently treated the deceased on several occasions. Therefore, basing on the medical record and the testimony of PW2, the Tribunal has rightly arrived at the conclusion that the death occurred due to the injuries sustained by the deceased in the accident.

17. The arguments of the learned counsel for the appellant-insurance company that the injuries suffered by the deceased were simple in nature and that would not have led to the death of the deceased cannot be taken into consideration in the light of the evidence of PW2-medical officer.

18. Therefore, there are no valid grounds to interfere the findings of the Tribunal in holding the respondent Nos.1 and 2 jointly and severally liable for payment of compensation of Rs.4,32,000/- with interest at 7.5% per annum from the date of petition till realisation. The appeal is devoid of merit and is liable to be dismissed.

19. In the result, the appeal is dismissed, and the order dated 02.03.2013 passed by the Tribunal in O.P. No.517 of 2008 is confirmed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

24th April, 2017

KSM

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