HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.1308 of 2010

JUDGMENT:

This appeal is arising out of the order and decree dated 24.06.2005 in O.P.No.375 of 2001 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Ranga Reddy District at L.B.Nagar (for short, the Tribunal).

2. The appellants are the claim petitioners, who have filed O.P.No.375 of 2001 claiming compensation of Rs.15 lakhs on account of the death of Babu Rao in the motor vehicle accident. The Tribunal, on consideration of the evidence, dismissed the OP.

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

On 31.10.1999 the deceased was proceeding on a scooter from ECIL X roads towards Sainikpuri. At about 8.30 pm., while he was going on the extreme left side of the road, at about 8.30 pm., at EDC, Kamalanagar, one unknown lorry came in opposite direction on the wrong side of the road and hit the scooter. Due to that, the deceased sustained head injury and was shifted to NIMS Hospital, and from there, he was referred to Apollo Hospital, Banjara Hills, Hyderabad. He succumbed to injuries while undergoing treatment. The Police, Kushaiguda registered a case in Crime No.304/99 under Section 304-A IPC. The deceased was 45 years old and was working in ECIL and was earning Rs.12,542/- per month. On account of the death of the deceased, the wife and children of the deceased claimed compensation of Rs.15 lakhs against respondent Nos.1 and 2.

4. The first respondent, owner of the lorry, filed counter denying the age, occupation and income of the deceased and also stating that the accident

occurred due to the rash and negligent driving of the deceased himself. In the counter, he stated that his lorry is insured with the second respondent and that the claim was highly excessive and exorbitant. He also stated that in case if compensation is awarded, the second respondent would be liable to pay the same, being the insurer of his vehicle.

5. The second respondent filed counter denying the allegation that the driver of the lorry had driven it in a rash and negligent manner. It also denied the age, occupation and income of the deceased. It is further stated that the deceased had no valid and subsisting driving licence to drive motorcycle and that the policy yet to be confirmed by the insurance company. It is further stated that the claim is excessive and exorbitant and sought for dismissal of the petition.

6. The Tribunal has framed the following issues:

> "1. Whether the accident occurred due to rash and negligent driving by the driver of the lorry bearing No.API-2628?
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> 2. Whether the vehicle involved in the accident is insured with the 2nd respondent?
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> 3. Whether the petitioner is entitled for compensation? If so, to what amount and against whom?
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> 4. To what relief?"

7. The Tribunal examined the witnesses P.Ws.1 to 3 and marked documents Exs.A.1 to A.7. On behalf of the respondents, R.W.1 was examined and Ex.B.1, insurance policy, is marked.

8. On consideration of the evidence, the Tribunal held issue No.1 that the appellants are able to prove that the deceased died in the accident occurred on 31.10.1999 at 8.30 pm due to the rash and negligent driving by the driver of an unknown vehicle. As far as issue No.2 is concerned, the Tribunal held that the vehicle in question is not involved in the accident and therefore, the second

respondent was not liable to pay compensation and indemnify the first respondent. Accordingly, the Tribunal held against the appellants. As far as issue No.3 is concerned, the Tribunal held that the appellants are not entitled for any compensation, as issue Nos.1 and 2 are held against them. In issue No.4, the Tribunal dismissed the claim of the appellants as rejected.

9. Aggrieved by the order of the Tribunal dismissing the OP, the appellants approached this Court for setting aside the order passed in O.P.No.375 of 2001, and for awarding of compensation of Rs.15 lakhs, as claimed by them in the OP.

10. Heard the arguments of learned counsel for appellants Sri Kota Subba Rao and learned counsel for respondent No.2 Sri V.Srinivasa Rao.

11. Learned counsel for the appellants submitted that the accident occurred on 31.10.1999 and immediately the deceased was shifted to NIMS Hospital, and from there, he was referred to Appollo Hospital, Hyderabad for treatment, and while he was undergoing treatment, he succumbed to injuries on 06.11.1999. After the death, the police registered a case and investigated the matter. It is further submitted that during the investigation, it is revealed that the lorry belonging to the first respondent was involved in the accident, and P.W.2 who was an eye witness to the accident deposed that he saw the accident and he also knew the lorry number on the date of accident itself, however, he went away after the accident had occurred and thereafter, a few months later, he went to the police station and gave the lorry number, and basing on it, the police investigated the matter and filed charge sheet.

12. It is contended on behalf of the appellants that the Tribunal went wrong in giving a finding that the lorry bearing No.API-2628 was involved in the accident. The evidence of P.W.2, who was an eye witness, was ignored by the

Tribunal. The second respondent, insurance company, has filed its counter before the Tribunal contending in paras 6 and 7 as under:

> "6. The narration given in the claim petition by the claimants about the occurrence of the said accident, clearly goes to show that there is negligence on the part of the deceased at the time in question for occurance of the accident. Therefore this respondent submits that it is not liable to pay compensation as prayed for as the accident occurred due to the negligence of the deceased.
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> 7. The preliminary report of the Investigator of this 2nd respondent goes to show that the owner of the above said lorry did not entrust the same to a duly licenced driver as on the date in question, which amounts to violation of the conditions of the Insurance Policy, if issued and subsisting at the material time and therefore this respondent denies the liability to pay any compensation for the violation of the policy condition."

13. It is contended that the second respondent conducted preliminary enquiry through investigator. According to their investigation, the owner of the lorry involved in the accident did not entrust the lorry to a duly licenced driver as on the date of accident which amounts to violation of conditions of insurance policy. On that ground, the insurance company believed that there is no liability for them to pay compensation for the violation of conditions of policy. This fact clearly reveals that the insurer is accepting that the crime vehicle involved in the accident is that of the first respondent and he did not entrusted lorry to a duly licenced driver. In fact, even for this fact, there is no rebuttal evidence adduced by the insurer. There is no basis for the insurer to say that the owner of the vehicle has entrusted the lorry to a person who has no valid driving licence.

14. The learned counsel for the respondents, placing reliance on paragraphs 6 and 7 of the counter, contends that the insurer has appointed investigator, and basing on his report, they came to the conclusion that the lorry of the first respondent is involved in the accident, but the first respondent did not entrust

the lorry to a duly licenced driver. Therefore, the contention of the insurer is that the driver of the crime vehicle was not possessing valid driving licence.

15. Learned counsel for the second respondent submitted that the allegations made in para 7 of the counter are in respect of the violation of conditions of insurance policy, as the driver of the crime vehicle was not possessing valid driving licence.

16. It is obvious from the contents of the paragraphs 6 and 7 of the counter, referred above, that the insurance company has appointed an investigator and he has filed a preliminary report stating that the first respondent, owner of the lorry, involved in the accident did not entrust the same to a duly licenced driver as on the date of the accident and it amounts to violation of conditions of insurance policy. The above contentions clinchingly prove the fact that the insurer is not disputing the involvement of the lorry bearing No.API-2628 in the accident.

17. It is pertinent to mention here that P.W.2 is an eye witness to the accident who went to police station and gave the lorry number a few months after the accident. As a matter of fact, P.W.2 Sri K.Laxman was shown as an eye witness in the charge sheet filed by the police and he was shown as L.W.6 in the charge sheet. Therefore, it is obvious that the police, after investigation, came to the conclusion that the lorry bearing No.API-2628 is involved in the accident and P.W.2 was an eye witness to the accident. P.W.2 stated in his evidence that he was an employee in ECIL and the deceased was also working in the same company. He stated that he witnessed the accident and noted the lorry number, but he did not know the fact that the deceased, who was an employee of ECIL, was involved in the accident. He came to know about the involvement of the deceased in the accident only on the next day.

18. The facts of the case reveal that on the fateful day i.e., on 31.10.1999 at about 8.30 pm., the accident has occurred while the deceased was going on his scooter. The lorry dashed against the scooter and fled away. Therefore, they could not get the proof by the date of filing of the complaint on 06.11.1999. P.W.2, though knew the lorry number, might not have noted the same, though on the next day he came to know that the deceased was involved in the accident. Only after a few months, when he went to police station, he gave the lorry number which is involved in the accident. It is pertinent to note that in the counter, the second respondent, insurer, had stated some facts. The contents in paras 6 and 7 can be taken into consideration as admissions made by the second respondent. The second respondent has appeared in the investigation in this case. The investigator has stated the insurance company that the owner of the crime vehicle did not entrust the vehicle to a duly licenced driver. It clearly indicates that the owner of the lorry involved in the accident has entrusted his lorry to the driver who had no valid licence. The burden is on the insurance company to prove that the driver of the crime vehicle was not having valid driving licence. But the insurer had not taken any steps to prove that aspect. When the insurer has taken a plea in the counter that the driver of the crime vehicle was not having driving licence, it should have taken steps of enquiring the owner and the concerned Regional Transport Authority as to whether the driver of the vehicle was having valid driving licence on the date of accident or not. There is no material on record to show that any steps were taken by the insurance company to find out whether the driver of the crime vehicle has valid driving licence or not.

19. The Tribunal, without considering the evidence of P.W.2, who was an eye witness, observed that there is some discrepancy in the evidence of P.W.2 and the contents of Ex.A.1. The Tribunal observed that as per Ex.A.1, the lorry came

in the opposite direction, whereas P.W.2 deposed that the lorry came from behind and hit the scooter. As a matter of fact, the Tribunal cannot place reliance on the claim made in the claim petition because, Ex.A.1 or the claim petition can be considered as evidence. The claim petition was made only basing on the complaint lodged by the brother of the deceased, who received some information and lodged the complaint, who was not an eye witness. The evidence of P.W.2 only has to be taken into consideration to prove the accident as he was an eye witness.

20. No doubt, the testimony of P.W.2 was recorded only after a few months, as the lorry was also traced only after a few months after the accident. P.W.2 gave information in the police station after few months. Merely because P.W.2 approached the police station after a few months, it cannot be a suspicious circumstance to disbelieve his version. There is ample material on record to show that the accident has occurred on 31.10.1999 and the deceased received injuries in the said accident and died. The Tribunal also believed that the accident has occurred due to the rash and negligent driving of the driver of an "unknown" vehicle. The crime vehicle and the driver of the crime vehicle were not available immediately after the accident, as he fled away from the scene of offence. During the investigation, the police traced the vehicle through P.W.2, who was an eye witness to the accident. The evidence of P.W.2 cannot be disbelieved, as he is an independent witness.

21. In this regard, the evidence of R.W.1 is relevant. R.W.1 stated that on 30.10.1999, he was informed by his driver that there was an accident involving the lorry and the scooter. R.W.1 further stated that his lorry was having valid insurance. This fact would clinchingly prove that there was an accident for his lorry, and it was not on 30.10.1999, but was on 31.10.1999. The driver since

fled away from scene of offence might have informed that the accident had occurred on 30.10.1999.

22. In fact, the owner of the vehicle said to have been aware of the accident, but he did not give any complaint to the police, as he did not want to get involved in the case. He did not even inform the police after he came to know about the death of the deceased in the accident. This fact clearly reveals that after the accident, the driver had fled away from the scene of offence and it is well within the knowledge of the owner about the accident and about the death of the deceased in the accident, but he did not go to police station because police would register a case against his vehicle and the driver. The investigating agency came to know through P.W.2 about the lorry bearing No.API-2628 which is involved in the accident, and filed charge sheet against the driver of the crime vehicle. The Tribunal disbelieved the version ignoring the evidence available on record. Therefore, the findings of the Tribunal in this regard are liable to be set aside.

23. The driver, after causing the accident, had fled away, and therefore, the police could not trace the vehicle until P.W.2 had informed the number of the vehicle to the police. However, it is a case of death of a person involved in a road accident. In motor accident cases, the strict rules of the Evidence Act are not applicable. The standard of proof of evidence cannot be either beyond reasonable doubt like in criminal cases or preponderance of probabilities in civil cases. The standard of evidence in motor accident cases should be in between the both. Therefore, it is obvious that the Tribunal has unnecessarily suspected the evidence of P.W.2 merely because his testimony was recorded after a few months after the accident.

24. It is also pertinent to note that if the lorry bearing No.API-2628 is not involved in the accident, and police is involving his lorry basing on the information of P.W.2, the owner would have protested against the arrest of the driver and involvement of his vehicle in the accident. There was no such protest from the owner. It is his evidence in the cross-examination that he came to know about the accident four or five months later. From this, it can be understood that the driver might have dashed the scooter and did not inform the same to his owner because he was scared of the incident that he would be questioned by police. Since P.W.2 had witnessed the accident, it had come out at last, may be after a few months. Since the owner did not raise any protest for the arrest of his driver involving his lorry in the accident, it clearly indicates that the accident has occurred because of his lorry only.

25. In view of the foregoing reasons, the order passed by the Tribunal is set aside and the matter is remanded to the Tribunal for considering the evidence on record afresh and to award compensation accordingly. The finding of the Tribunal that the lorry is not involved in the accident is set aside.

26. In the result, the appeal is allowed in part and the matter is remanded to the Tribunal for considering the evidence on record for awarding compensation. The Tribunal is directed to dispose of the matter within one month from the date of receipt of a copy of this judgment. Consequently, Miscellaneous Petitions pending, if any, shall stand closed. No costs.

GUDISEVA SHYAM PRASAD, J.

Date: 21.03.2017
TJMR