HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA No.833 of 2010

JUDGMENT:

This appeal is arising out of the judgment and decree dated 20.11.2009 passed in M.V.O.P.No.773 of 2008 on the file of the Chairman-Motor Vehicles Accidents Claims Tribunal-cum-VIII Additional District Judge, Guntur.

2. The appellants are the petitioners, who filed the said O.P. under Sections 140 and 163 of Motor Vehicles Act claiming compensation of Rs.3,00,000/- with interest at 18% per annum on account of the death of deceased in the motor vehicle accident.

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 on 15.03.2007, while the deceased and others were returning to Madala Village from Sattenapalli in an auto bearing No.AP 7TT 7705 and when they reached near current office, Sattenapalli, the driver of the auto had driven it in a rash and negligent manner and hit one rickshaw parked in road margin. The handle of the auto rickshaw caused injury to the abdomen of the deceased and the other two passengers who were travelling in the auto caused bleeding injuries. They were shifted to the Government Hospital, Sattenapalli and from there to Government General Hospital, Guntur for treatment. The police, Sattenapalli registered a case in crime No.40 of 2007 under Sections 337 and 338 IPC against the driver of the auto. The deceased after his discharge from the hospital had succumbed to injuries. The deceased was aged about 38 years and was earning Rs.100/- per day by working as a cooli. He was sole breadwinner of the family and

therefore, they claimed compensation of Rs.3,00,000/- on account of his death. Respondent No.1 remained *ex parte* and the 2nd respondent filed written statement before the Tribunal denying the material allegations in the claim petition. It is denied that the auto was having valid insurance policy and the respondent was having valid permit at the time of accident. It is contended that the driver of the auto was not having valid and effective driving licence and the claim of the petitioners is excessive and that there was no negligence on the part of the driver of the auto. It was further contended that the claim is highly excessive and therefore, sought for dismissal of the petition. On consideration of the evidence, the Tribunal awarded compensation of Rs.11,000/-. Aggrieved by the same, the petitioners filed this appeal for enhancement of compensation.

5. Heard both sides.

6. Learned counsel for the petitioners submits that the quantum of compensation awarded by the Tribunal is very meager and the Tribunal is wrongly exonerated the liability of the insurer.

7. Originally, the petitioners filed a petition under Section 163-A of the Motor Vehicles Act claiming compensation on account of the death of the deceased. Under this provision, the claimants shall not plead for permanent disability. The claim has been made due to very wrongful act or default of the owner of the vehicle or vehicles concerned or of any person. It is clear from the provision under Section 163-A(2) that the claimant need not pleaded or established the death occurred due to the wrongful act on behalf of the owner of the vehicle or any other person. The Tribunal, however, decided issue No.1 as it is filed under Sec.166 of the Motor Vehicles Act. As a matter of fact, the liability, wrongful act or neglect or default on the part of the driver or owner or any other person

need not be established under this provision, but the Tribunal in spite of giving a finding on this aspect had gone to another aspect with regard to proof of the death of deceased as to whether the injuries received in the accident or not. However, there is no need for the petitioners to prove that he died due to the negligent act on the part of the driver of the vehicle.

8. The Tribunal, on consideration of the evidence, held that the deceased did not die because of the injuries received in the accident. The Tribunal has taken into consideration, Ex.A8, the wound certificate of the deceased which reveals the injuries, 1) Red tender contusion of 5 x 5 cms present on right iliac fossa and 2) An abrasion of 5 x 3 cms present over the injury No.1 and came to the conclusion that he received one grievous injury and one simple injury. The Tribunal also placed reliance on Ex.A5 discharge summary, which discloses that the deceased was treated as inpatient for about 6 days, and basing on the medical evidence, the Tribunal awarded compensation of Rs.11,000/-. Since the petitioners filed this petition under Section 163-A of Motor Vehicles Act, the Tribunal followed the second schedule of 163-A and awarded compensation accordingly.

9. It is obvious that this case is not treated as a case of death due to the injuries and therefore, the Tribunal has awarded compensation only for injuries received in the incident. Therefore, there are no valid grounds to interfere with the findings of the Tribunal in this regard for enhancement because the Tribunal has followed the second schedule of Motor Vehicles Act and awarded compensation accordingly. There is no evidence to show that the deceased died due to the injuries received by him in the accident. Moreover, the petitioners have not filed petition

converting their claim into that of death arising out of the injuries sustained by him in the accident.

10. As far as other contention of learned counsel for the petitioners is concerned, the petitioners are entitled for recovery of the amount from the insurer. By placing reliance on a decision reported in *National Insurance Company Limited v. Swaran Singh*[1], the Tribunal exonerated the liability of the insurer. It is held that the 1st respondent-owner of the vehicle is only liable to pay compensation to the petitioners.

11. The insurer has examined R.Ws.1 and 2 on his behalf. R.W.1 is the Sales Manager of 2nd respondent company. His testimony reveals that the driver of the auto was not having valid driving licence at the time of accident. The owner of the vehicle-respondent No.1 gave the crime vehicle to the driver intentionally knowing that he has no valid driving licence to drive his transport auto. Hence, there is violation of terms and conditions of the Insurance policy. R.W.2 is the Junior Assistant in R.T.O. office, Guntur. In his evidence, Ex.B3 extract of driving licence of the driver of crime vehicle is marked. His evidence clearly reveals that there is driving licence for the driver of the crime vehicle to drive a light motor vehicle, but he has no licence to drive the auto rickshaw, which is a non-transporting vehicle. Therefore, in the light of the decision of Apex Court in ***S.Iyyapan v. United India Insurance Co. Ltd.***[2], pay and recovery can be ordered.

12. It is obvious that the driver of the crime vehicle was not having valid driving licence to drive the auto which is a non-transport vehicle. In this regard, learned counsel for the petitioners placed reliance on ***S.Iyyapan's*** case and submitted that if a person is having a licence to

[1] AIR 2004 SCC 1531
[2] (2013) 7 SCC 62

drive one type of vehicle drives another type of vehicle, the liability of the insurance company cannot be exonerated and the insurance company can be ordered to pay at the first instance and recover the same from the owner of the vehicle. It is further submitted that since the deceased is a third party to the insurance policy, the violation on the part of the owner of the vehicle cannot be fastened on the petitioners. Therefore, the insurer may be directed to pay at the first instance and recover the same from the owner of the vehicle.

13. Considering the facts and circumstances of the case, the 2nd respondent is directed to pay the entire amount to the petitioners and recover the same from the owner of the crime vehicle.

14. In the result, the appeal is partly allowed. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

GUDISEVA SHYAM PRASAD,J

Date : 13.03.2017
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