

THE HONOURABLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A.No.3084 OF 2005

JUDGMENT:

The order, dated 22.09.2004, in M.V.O.P.No.456 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – V Additional District Judge, Chittoor at Tirupati is assailed in this appeal by the New India Assurance Company Limited, which has been arrayed as respondent No.2 in the above M.V.O.P.

2. The facts and circumstances which led the appellant to file the present appeal are briefly stated as below:-

Respondent Nos.1 to 3 herein, who are the wife, son and mother of the deceased P.Sreenivasulu Naidu respectively, have made a claim of Rs.3,00,000/- as against respondent No.4 herein and also against the New India Assurance Co. Ltd (the appellant herein) regarding the death of the deceased P.Sreenivasulu Naidu in the accident that occurred on 08.08.2000 at 9:15 A.M. on Kapilatheertham Main Road, Kapilatheertham. The Tribunal, on appreciation of the evidence given by P.W.2, who spoke about the manner of the accident, and the other relevant material such as Exs.A-1 to A-3, had come to the conclusion that while the deceased was proceeding on his scooter bearing No.AP03/482 on Kapilatheertham Main Road, he was hit by the bus bearing No.TN.29/N.0069, which was driven by the driver of respondent No.4 herein in a rash and negligent manner and such act of him resulted in instantaneous death of the deceased. There is no much quarrel in respect of the negligence, if any, attributed to the driver of the bus belonging to respondent No.4. The appellant had taken

the stand before the Tribunal that the driver of the offending bus was not possessing valid and subsisting driving license at the relevant point of time. Exs.B-1 and B-2 were documents relied upon by the appellant before the Tribunal to prove its above mentioned contention. The contention of the appellant is that no liability would have been fastened as against it as the driver of the offending bus was not possessing valid and subsisting driving license as on the date of the offence. Since respondent Nos.1 to 3 were not the eye witnesses to the occurrence, the evidence, if any, given by them attributing negligence on the part of the driver of the bus was disbelieved by the Tribunal. The certified copies of the judgment and decree passed in M.V.O.P.No.466 of 2000 on the file of the III Additional District Judge, Tirupati were produced by the appellant in support of its contention that the scooterist (the deceased herein) was responsible for the occurrence of the accident. The Tribunal relied on the evidence of P.W.2, who was the direct eye witness to the occurrence, and came to the conclusion that his evidence as to the manner of the accident is inspiring confidence, accordingly, gave the finding that the accident in question had occurred only on account of rash and negligent driving of the offending bus driven by its driver by discarding Exs.B-2 and B-3. Accordingly, the Tribunal partly allowed M.V.O.P.No.456 of 2000 by awarding compensation of Rs.1,70,000/-. Challenging the same, the present appeal is filed by New India Assurance Company.

3. The main contention of the learned Standing Counsel for the appellant is that the Tribunal, without proper appreciation of

ocular testimony of R.Ws.1 and 2, has fastened the liability as against the appellant.

4. The Tribunal, at paragraph No.16 of its order, has given the finding that R.W.2 was not an eye witness to the accident and he had no knowledge as to non-possession of valid and subsisting driving license by the driver of the bus at the relevant point of time, and thus, not accepted the contention of the appellant herein. Since no steps were taken by the appellant herein i.e., at least, to file the certified copy of the charge sheet to prove its contention that the offending bus was driven by the cleaner at the relevant point of time and that he had no driving license etc., the Tribunal had rightly held that the appellant failed to establish the contention that the bus owner violated the terms and conditions of the policy by entrusting the bus to an unauthorized person, who was not possessing the valid and subsisting driving license.

5. This Court has not noticed any substantial or valid grounds to dissent from the view taken by the Tribunal to fasten the liability as against the appellant herein. The appellant herein, having agreed to indemnify the liability of the vehicle owner in case of accidental death or bodily injuries to third parties, cannot claim for exoneration of its liability to pay compensation without establishing the contention, if any, raised as to the breach of conditions of the policy. The appellant, in the instant case, has not produced any other document except Exs.B-2 and B-3 and the report of R.W.2, who admittedly is not the eye witness to the occurrence. Since no evidence of any sort is produced by the appellant claiming that the policy conditions are breached by the

vehicle owner by handing over the vehicle to an unauthorized person, who does not possess valid and substantial driving license at the relevant point of time, it is difficult to exonerate the appellant from its liability to pay the compensation jointly and severally along with the vehicle owner.

6. Coming to the quantum of compensation awarded by the Tribunal is concerned, the Tribunal seems to have awarded compensation of Rs.1,70,000/- though claim is laid by respondent Nos.1 to 3 for payment of compensation of Rs.3,00,000/-. Lot of exercise is undertaken by the Tribunal to assess the compensation of the deceased. Therefore, this Court does not intend to give any other opinion on the quantum of compensation awarded by the Tribunal. However, on accepting the contention of the learned Standing Counsel for the appellant that the interest awarded by the Tribunal is excessive, this Court reduces it to 7.5% per annum from 9% per annum.

7. Accordingly, the appeal is allowed in part reducing the interest awarded by the Tribunal from 9% per annum to 7.5% per annum payable from the date of petition till the date of payment but there shall be no order as to costs.

8. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE J. UMA DEVI

26.04.2017
AMD

THE HONOURABLE MS. JUSTICE J. UMA DEVI



M.A.C.M.A.No.3084 OF 2005

Date: 26.04.2017

AMD