HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 429 of 2011

ORDER:

The appellants, who are claimants, filed this appeal against the Award and decree dated 02.09.2010 passed in OP No.461 of 2009 by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy, granting compensation of Rs.2,36,000/- against the claim of Rs.4,00,000/- for the death of the deceased–Melasangam Anjaiah in the motor accident occurred on 22.06.2009.

The brief facts of the case are that, the petitioner No.1 is the wife and petitioner Nos.2 to 4 are children of the deceased respectively and they are dependents on him. They filed the claim petition in OP No.461 of 2009 under Section 166 of Motor Vehicles Act, 1988, before the court below alleging that on 22.06.2009 the deceased-Melasangam Anjaiah boarded the auto bearing No.AP 23 W 1292 at Pedda Chelmeda (village) to go to Kamkole X road and at about 10.00 a.m. when the auto reached Antharam bus stop, near a culvert, the driver of the offending vehicle drove it in a rash and negligent manner and due to the jumps of the auto, the deceased fell down on the road; as his dhoti edge was struck to the auto, he was dragged upto a distance of 10 meters, which resulted in severe bleeding injuries to his head. Immediately, he was shifted to the government hospital, Sangareddy and from there, to Gandhi Hospital, Secunderabad, where he succumbed to the injuries on 03.07.2009 while undergoing treatment. A case in Crime No.51 of 2009 on the file of P.S. Munipally, was registered for the offence punishable under Section 304-A IPC against the driver of the offending auto bearing No.AP 23 W 1292. Further, at the time of accident, the deceased was aged about 50 years and hale and healthy and used to earn Rs.8,000/- per month by doing agricultural work and he was only an earning member of the family. Due to his death, the claimants, who are dependents, lost their support of the deceased. Respondent No.1 being the owner of the offending vehicle and insured with respondent No.2-insruance company, are jointly and severally liable to pay compensation to the petitioners.

Before the court below, the respondent No.1-owner of the vehicle remained ex-parte.

Respondent No.2-Insruance Company filed counter denying the main and material averment of rash and negligent driving of the driver of the auto by its driver. Further, the offending vehicle was not insured with respondent No.2 and the driver of the offending vehicle did not possess any valid and effective driving licence and therefore, the insurance company is not liable to pay compensation to the claimants.

Based on the above averments, the tribunal framed the following issues for consideration.

1. Whether the accident occurred due to the rash and negligent driving of the driver of the crime vehicle ?
2. Whether the petitioners are entitled for compensation, if so, at what quantum and from whom ?
3. To what relief ?

During the trial, on behalf of claimants, P.Ws.1 and 2 were examined and documents Exs.A1 to A6 were marked. On behalf of respondent No.2, R.Ws.1 and 2 were examined and documents Exs.B1 to B3 were marked.

The tribunal, while dealing with Issue No.1 with regard to rash and negligent driving of the driver of the offending vehicle, based on the evidence of P.W.2, who is an eye witness to the accident and whose evidence corroborates with the documentary evidence of Exs.A1 to A6, held that the accident was occurred due to rash and negligent driving of the driver of the offending vehicle and thereby answered the issue in favour of the appellants-claimants. In the light of the clear findings of the tribunal with regard to rash negligent driving of the driver of the vehicle, this court is of the considered view that no interference is called for on this aspect.

Heard learned counsel for appellants and learned counsel appearing for respondentNo.-2 insurance company.

The first and foremost contention raised by the learned counsel for respondent No.2-Insurance company is that at the time of accident, the driver has driven the auto rickshaw, which is a transport vehicle, without possessing any valid driving licence, as such there is violation of terms and conditions of the insurance policy.

RW-2, who is the Administrative Officer, working in the office of RTA Sangareddy, deposed that as per Ex.B3-driving licence extract, the driver is authorized to drive auto rickshaw, non-transport and Light Motor Vehicle, and Ex.B3 is valid upto 28.05.2028. During cross-examination, it was elicited that the transport vehicle is used for hire purpose and non-transport vehicle used for self and that the auto comes under the definition of transport and the driver has authorized to drive the auto rickshaw and light motor vehicle. The evidence of RW-2 corroborated with the evidence of RW-1 on this aspect. Considering the evidence of R.Ws.1 and 2 coupled with Exs.B2 and B3, the tribunal came to the conclusion that since the driver of the offending vehicle does not possess valid driving licence i.e., transport licence to drive the transport vehicle by the date of accident, respondent No.2-insurance company is not liable to pay compensation to the appellants-claimants and that respondent No.1 being the owner of the vehicle alone is liable to pay compensation to the appellants.

At the time of hearing, learned counsel for appellants-claimants relied on the decision in ***Mukund Dewangan V.Oriental Insurance Co. Ltd.,***[1] wherein the three-Judge Bench dealt with the aspect as to 'whether a person holding driving licence to drive light motor vehicle is competent to drive transport vehicle, motor car or tractor' and held that no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class and a licence issued under Section 10(2)(d) of the Act continues to be valid after amendment vide Act 54 of 1994 in Motor Vehicles Act.

In ***Sant Lal V. Rajesh and others***[2] the Division Bench of the Apex Court allowed the appeals following the decision of the three-Judge Bench of the apex court in the decision cited supra (1) and held that the driver having licence to drive light motor vehicle can drive such a transport vehicle of LMV class and there is no necessity to obtain separate endorsement, since tractor attached with the

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[1] 2017 ACJ 2011
[2] 2018 ACJ 976

trolley was transport vehicle of the category of light motor vehicle and hence, there was no breach of the conditions of the policy and thereby fixed the liability jointly and severally.

In the light of the above decisions, the findings of the tribunal are hereby reversed holding that as per Ex-B3, the driver of the offending vehicle is deemed to be having a valid driving licence to drive the transport vehicle of light motor vehicle class and no separate endorsement is needed since the offending auto falls under the category of light motor vehicle.

As far as the aspect of quantification is concerned, the tribunal has taken the notional income of the deceased at Rs.3,000/- per month and disbelieved the claim of the appellants that at the time of accident the deceased used to earn Rs.8,000/- per month, as there is no supporting evidence. The Tribunal deducted 1/3rd of the income towards personal expenses of the deceased and the monthly contribution to his family was taken at Rs.2,000/- and thereby the annual income of the deceased was arrived at Rs.24,000/-. Since at the time of accident the deceased was aged about 56-60 years, the tribunal, as per the decision of the Apex Court in ***Sarla Verma and others V.Delhi Transport Corporation***[3], had applied the appropriate multiplier of 0.9 and worked out the future loss of earnings of the

[3] 2009(3) ALD 83 (SC)

deceased to Rs.2,16,000/-. Further, the tribunal awarded a sum of Rs.10,000/- towards consortium and Rs.10,000/- towards loss of estate to petitioner No.1, which amounts at very low side in the view of this Court. Taking into consideration of the fact that due to sudden death of the deceased, the appellants/claimants lost their support in all respects, this court is of the considered view that ends of justice would be met if an amount of Rs.15,000/- is awarded towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.40,000/- towards consortium as per the decision of the Apex Court in **National Insurance Co. Ltd., V.Pranay Sethi and others**[4]. Hence, the appellants/claimants are entitled to Rs.70,000/- under conventional heads in addition to the amount of Rs.2,16,000/- as awarded by the tribunal. In total they are entitled to Rs.2,86,000/- (Rs.2,16,000/- + Rs.70,000/-). Therefore, the respondent No.2-Insurance Company is directed to pay the entire compensation amount of Rs.2,86,000/- to the appellants/claimants along with interest at the rate of 7.5% as awarded by the tribunal, within a period of one month from the date of receipt of a copy of the order, failing which, the enhanced compensation amount of Rs.70,000/- carries interest at the rate of 9% per annum from the date of filing of the petition till the date of realization. The amount

[4] 2017(6) ALD 170 (SC)

already deposited by the respondents, if any, shall be given credit. On such deposit, the first claimant is at liberty to withdraw Rs.1,29,000/- and the remaining claimants can withdraw Rs.59,000/- each.

The Civil Miscellaneous Appeal is partly allowed to the extent indicated above. No costs.

Miscellaneous petitions if any pending, shall stand closed.

JUSTICE M.GANGA RAO

Dt.31.10.2018
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