HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 2157 OF 2009.

JUDGMENT:

1. The appellant/New India Assurance Company Limited preferred this appeal aggrieved by the Award and decree dated 13.09.2006 passed in OP.No.290 of 2003 whereby the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-Principal District Judge, Khammam, awarded compensation of Rs.2,87,000/- with interest at 7.5% per annum from the date of petition till the date of realization in favour of first respondent/first claimants and rejected the claim of respondents 2 and 3/claimants 2 and 3 as they are major sons of the deceased and directed the Insurance Company (Appellant) and fourth respondent-owner of the offending vehicle to pay the said compensation jointly and severally.

2. It is contended by the appellant-Insurance Company that the Tribunal failed to note that the deceased being tort feasor himself, his legal heirs are not entitled to any compensation. Further the Tribunal having observed that there is no cause of action under Section 166 of the MV Act, it curiously assumed jurisdiction under Section 163-A of the MV Act when the said provision under law is distinct and that as no premium was paid under the workmen compensation Act, the claim of respondents 1 to 3/claimants would not lie against the Insurance Company. It is further contended that the Tribunal having taken into consideration the involvement of the two vehicles failed to observe that the claim petition is not maintainable.

Per contra, the respondents contended that the Award of the Tribunal is legal, valid and the same is strictly in accordance withy law. There is no error or illegality in the Award. The deceased as a driver under the fourth respondent was earning Rs.4,500/- per month and had been spending the amount for the welfare of his family.

3. The claim of respondents 1 to 3/claimants in brief is that on 9.5.2002 while the deceased along with the cleaner got loaded rice bags into the lorry bearing No.AP 16X 6669 at Vijayawada to be unloaded at Munnar of Kerala State and when the said lorry reached in between No.242/2 and 242 on National High Way No.5, at Tettu village of Gudlur Mandal, Prakasam District, the driver of the lorry in order to save the people moving across the road, took a turn, as a result of which, the lorry turned turtle, due to which, the driver of the lorry died on the spot and the cleaner received multiple injuries.

4. Before the Tribunal, the fourth respondent herein, owner of the offending lorry was set at ex parte. The appellant-Insurance Company filed counter contending that the accident was due to rash and negligence of the driver himself. The respondents/claimants are not dependants on the income of the deceased particularly respondents 2 and 3/claimants 2 and 3 were doing jobs and maintaining the first respondent/first claimant. It was further stated that the driver was not holding valid and effective driving licence as on the date of accident and that the claim is excessive.

5. The Tribunal having considered the pleadings of the respective parties and having heard the learned Counsel on either side, framed the following issues for settlement.

1. Whether the risk of the deceased is covered under the policy and thereby the petitioners are entitled to claim compensation ?
2. To what amount of compensation, the petitioners are entitled to ?

6. In order to prove the respective claims, on behalf of claimants, P.W.1 was examined and Exs. A1 to A.4 were got marked. On behalf of the appellant/Insurance Company and fourth respondent/Owner of the offending vehicle, R.W.1 was examined and Ex.B.1 policy was got marked.

7. Now the point that arises for determination is

" Whether the Award of the Tribunal suffers from legal infirmities warranting interference. ?

8. The first respondent/first claimant, wife of the deceased herself was examined as P.W.1. In her evidence affidavit, she reiterated the pleadings advanced in the claim petition. Her evidence is that the deceased Chandram was the driver on lorry bearing No. AP 16 X 6669, having employed by the fourth respondent-owner at the time of accident. In the claim petition, there is a specific assertion that respondents 2 and 3/claimants 2 and 3 are the sons of the deceased Chandram. The Tribunal having marshaled the facts and evidence on record came to the conclusion that respondents 2 and 3/claimants 2 and 3 are majors and they were having their own

income. On account of the same, it was held that they are not dependants on the deceased and not entitled for compensation. However, taking into consideration the evidence of P.W.1, who being the wife and legally entitled to be maintained by the deceased, the Tribunal held that she is the dependant and entitled for compensation. The said finding of the Tribunal has become final having not been questioned by the appellant-Insurance Company in the grounds of appeal.

9. It is the consistent evidence of P.W.1 that on 9.5.2002 her husband was driving the lorry bearing No.AP 16X 6669 and when the said lorry reached in between No.242/2 and 242 on National High Way No.5, near Tettu village of Gudlur Mandal, Prakasam District, in order to save the people moving across the road, he took a turn, as a result of which, the lorry turned turtle and he died on the spot.

10. Ex.A.1 is the crucial document for consideration. In Ex.A.1, there is a specific assertion that the deceased Chandram was driving lorry bearing No. AP 16X 6669 and when the said lorry reached Tettu village of Gudlur Mandal, Prakasam District on National High Way No.5, due to his negligence, the lorry turned turtle. Ex.A.2 is the complaint, based on which, Ex.A.1 was registered against the deceased. However, the driver of the lorry died on the spot due to injuries sustained in the accident, as such, the case registered against him stands abated. The same was the view expressed by the inquestdars in the Panchanama Ex.A.3.

11. The evidence of P.W.1 supported by Exs.A.1 to A3 is thus well establish that the accident occurred due to rash and negligent driving of the lorry by the deceased himself. At the time of accident, the deceased was driver of the offending lorry bearing No.AP 16X 6669.

12. The Tribunal having elaborately discussing the provision under Section 147 (1)(b) of the MV Act and the provisions of the Workmen's Compensation Act came to the right conclusion that the application of respondents/claimants who claimed compensation due to the death of the driver himself, who was responsible for causing the accident, is maintainable both under the MV Act as well as Workmen's Compensation Act. It was further held that the owner of the vehicle, who obtained Ex.B.1 policy under Section 146 of the MV Act is not required to take separate policy to cover his liability in case of death or bodily injury of his employee arising out of his employment under the Workmen's Compensation Act . The employees for whom no policy is required to be taken are specified in the provisio to Section 147(1)(b) of the Act including the employee engaged in driving of the vehicle in normal course. If an accident takes place due to rash and negligent driving of the vehicle by the driver and he got himself injured resulting in his death or bodily injury, he is not entitled to claim compensation under the provisions of the MV Act. But at the same time, under the provisions of the Workmen's Compensation Act, the injured/legal heirs of the deceased are entitled to claim compensation against the employer,

i.e. the owner is liable to pay compensation under the Workmen's Compensation Act. To put it aptly, even if the employee is responsible for the accident caused, though the employer is absolved from paying compensation under the MV Act, his liability to pay compensation under the Workmen's compensation Act remained in tact and no separate policy to cover the liability under the said Act is required, as was held by this Court in ***Adhikarala Jagadeeswara Rao Vs. Gopala Krishna Transport and Ors*** {2005 (1) ALD 111}.

13. The Administrative Officer of the appellant-Insurance Company was examined as R.W.1 His evidence is that the company issued Ex.B.1 policy to the owner of the offending lorry bearing No. AP 16X 6669 which was in force from 19.02.2002 to 18.02.2003 and the accident occurred in the early hours of 9.5.2002 by which date, Ex.B.1 policy was in force. In view of the investigation pursuant to Ex.A.1 FIR and findings made in the final report and since the case was registered against the deceased Chandram, as there was rash and negligence on his part, the Insurance Company is not liable to pay any compensation. During the cross examination, he has denied the suggestion that the policy was in force on the date of the accident and they are liable to pay compensation. Though in the counter he took plea that the deceased driver Chandram was not holding valid and effective driving licence as on the date of the accident, there is no whisper about the driving licence particulars of the deceased Chandram in the evidence of RW.1 nor the appellant choose to produce the driving licence particulars of the deceased or

discharged its statutory obligation by issuing notice to the owner of the offending vehicle-fourth respondent herein requiring him to produce driving licence particulars of the deceased driver Chandram. In the absence of any such oral or documentary evidence, I am of the considered view that the appellant-Insurance Company failed to establish that the deceased driver had no valid and effective driving licence as on the date of accident.

14. As already discussed herein above, this Court in the decision referred supra held that once the policy was taken by the owner of the vehicle under Section 146 MV Act, it covers the liability of the owner of the vehicle to pay compensation to the third party (victim in the accident) as well as his own driver who caused the accident under the Workmen's Compensation Act. Hence it is left open to the discretion of the claimants either to approach the Tribunal under the MV Act or the Forum under the Workmen's Compensation Act. The claimants approached the Tribunal by filing an application claiming compensation. It is pertinent to note that there is no dispute that the deceased was the driver of the lorry bearing No. AP 16 X 6669 at the time of accident and he was the employee under the fourth respondent-owner of the offending lorry and the accident took place out of and during the course of his employment and it is also a fact that the risk of the claimants is covered by the Ex.B.1 policy.

15. With regard to the wages and occupation of the deceased, there is evidence of P.W.1 besides Exs. A.2 complaint copy, Ex.A.3 Inquest report and Ex.A.4 PM report wherein the age of

the deceased was mentioned as 50 years. The Tribunal having taken the age of the deceased as mentioned in Ex.A.4, monthly wages at Rs.2,500/-, deducting 1/3rd towards his personal expenses and applying the multiplier13, awarded compensation of Rs. 2,87,000/- which shall be paid by the appellant-Insurance Company and fourth respondent-Owner of the offending vehicle, jointly and severally, with interest at 7.5% per month from the date of petition till the date of realization.

16. In the facts and circumstances discussed hereinabove, I am of the considered opinion that the deceased was the employee under Respondent N0.4/owner of the offending lorry at the time of accident. Ex.B.1 policy covers the risk of the driver/deceased. By relying on the decision of this Court in ***Adhikarala Jagadeeswara Rao Vs. Gopala Krishna Transport and Ors*** *(supra)* the Tribunal rightly held that the first respondent/first claimant, wife of the deceased is only entitled to receive the compensation, whereas respondents 2 and 3/Claimants 2 and 3 are not dependants of the deceased and therefore they are not entitled to receive the compensation. The award of the Tribunal is legal, valid and do not suffer from any legal infirmities.

17. The appeal is accordingly dismissed confirming the Award and decree dated 13.09.2006 passed in OP.No.290 of 2003 passed by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-Principal District Judge, Khammam..

18. The appellant-Insurance Company and fourth respondent-owner of the offending vehicle are directed to deposit the compensation amount 2,87.000/- with interest at 7.5% from the date of petition till realization, if not already deposited or paid, within thirty days from the date of receipt of a copy of judgment.,

19. On such deposit being made, the first respondent/first claimant is permitted to withdraw the same.

Advocate fee fixed at Rs.2,500/-.

20. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N.BALAYOGI

Dated 5th June, 2018.
Msnr