SMT JUSTICE T. RAJANI

MA CMA No.395 of 2012

JUDGMENT:

This appeal is preferred by the appellants, who are the claimants, questioning the judgment, dated 29.12.2011, by the Motor Vehicles Accidents Claims Tribunal-cum-VI Additional District Judge, (Fast Track Court), Narsapur, passed in MVOP No.340 of 2009 on the ground that the court below erred in not considering the fact that the deceased was aged about 25 years and earning Rs.5,000/- per month on tailoring; it erred in not considering the fact that the accident took place on 06.06.2007 causing injuries to the deceased, which ultimately resulted in the death of the deceased; it erred in holding that a mere registration of an FIR under Section 304-A is not sufficient to hold that the accident occurred due to the rash and negligent act of the driver. On the above grounds, the appellant seeks to set aside the judgment of the court below.

2. Heard both the counsel.

3. The facts of the case, in brief, are that the deceased, who was aged 25 years and earning Rs.5,000/- per month by working as a tailor, met with an accident on 06.06.2007, while he was travelling in a city bus bearing No.AP 37X 0717 by boarding at Perupalem and while going to Bhimavaram. He stood at the front side bus door and the 1st respondent drove the bus in a rash and negligent manner and applied sudden breaks at Kottuvarimeraka turning point, due to which the

deceased fell on the road and received severe head injury and lost consciousness. The deceased was shifted to the hospital of Dr.Chinamilli Satyanarayana, Narsapur, for first aid and later he was shifted to Bhimavaram Hospital and subsequently he was admitted in Help Hospitals, Vijayawada for better treatment. But in spite of the said treatment, he succumbed to the injuries on 11.07.2007.

4. Respondents 1 and 2 remained *ex parte* and respondent No.3 filed counter, denying the material averments of the petition and contending that the 1st respondent did not have valid driving licence at the time of accident. It also denied the validity of the insurance policy. The court below, after considering the rival pleadings, framed appropriate issues and during trial, examined PWs.1 to 4 and marked Exs.A1 to A10 and Exs.X1 to X3 on behalf of the petitioners. No witnesses were examined and no documents were marked on behalf of the 3rd respondent. The court below held that the 1st respondent did not have valid driving licence and that the petitioners failed to prove the same and when the licence was not produced in spite of the notice issued to them, the 3rd respondent Insurance Company would not be liable, as an adverse inference has to be drawn against the petitioners that there was no such licence to the 1st respondent. The court below also did not believe the accident, by considering the fact that there was a delay in giving the report to the police. But, however, no finding was given with regard to the negligence.

5. The counsel for the 3rd respondent contends that admittedly the deceased was travelling in a bus, by standing on the foot board at the front door and hence, it is an obvious case of contributory negligence. But the manner of the accident, as spoken to by PW2, is that the deceased was standing near the front side bus door and there were no doors to the said bus and the 1st respondent drove the bus in a rash and negligent manner at a turning point, due to which the deceased fell down. The petition is filed under Section 163A of the MV Act, where, *in fact*, the negligence of the driver of the crime vehicle need not be proved. Even otherwise, though the deceased was standing at the front door of the bus, it is the duty of the conductor or the driver, as the case may be, to see, that the deceased takes his place in any of the seats in the bus and that no one stands at the door. It is for the driver to move the bus after taking all the said precautions. Moreover, the manner of the accident shows that at the turning point, the driver drove the bus in a rash and negligent manner and applied sudden breaks, due to which the accident occurred. Hence, it is a clear case of the negligence of the driver of the bus and it is held that the accident occurred due to the negligent driving of the driver of the bus.

6. The second aspect, which needs to be considered, is the delay in giving the report. The accident occurred on 06.06.2007 while the report was given only on 11.07.2007. A perusal of the report given by the complainant would itself render an answer to the delay. It says, that immediately after the accident the deceased was taken to the hospital of one

Dr.Chinamilli Satyanarayana at Narsapur and as the condition of the deceased was serious, he was taken to the hospital at Bhimavaram and from there he was advised to be taken to the hospital at Vijayawada. Hence, it can be understood that the condition of the deceased was very serious, which ultimately lead to his death and the people concerned would endeavour to sustain the life of the deceased, rather than reporting the matter to the police immediately. It also shows that the deceased succumbed to the injuries while undergoing treatment. Hence, the complainant, who is the sister of the deceased, must have been along with the deceased all through his treatment. It is only after his death that she could relieve herself to give the report. Apart from that, PW3, who is a consultant neuro-surgeon at Help Hospitals, stated, that on 07.06.2007 the deceased was admitted in a hospital with a head injury and emergency surgery was performed. The cause of the injuries as per the wound certificate, according to him, is road traffic accident, which occurred on 06.06.2007. The original wound certificate issued by him is marked as Ex.A7. Ex.X1, which is original summary treatment, certificate issued by him is also filed. He further stated that the case was treated as medico legal case. In the cross-examination, he, however, stated that the police intimation letter is not in the record and according to him, he is not the concerned and hence, he does not know whether the police registered a case or not. It was suggested to him that they did not intimate the matter to the police, which he denied.

7. The counsel for the 3rd respondent places reliance on judgment of this court reported in *Bajaj Alianz General Insurance Co. Ltd., v. Bhu8mi Reddy Venkawta Satya Rama Rao*[1], wherein the court held that the delay in giving the FIR turns the case doubtful. But the facts of the case dealt with by this court in the said case, are totally different.

8. PW4 is the Assistant Sub-Inspector-III, Traffic Circle, Vijayawada, who earlier worked as ASI III Town Law and Order, Vijayawada Police Station. According to his evidence, on 07.06.2007 early hours, he received medical intimation from Help Hospitals, Governorpet, Vijayawada, that one M.Suryanarayana sustained injuries in the bus accident and that he was admitted in help hospital. He immediately rushed to the hospital and recorded the statement of the deceased, who was taking treatment at ICU, since the accident took place at Perupalem of Mogalthur Mandal. He sent both the statement and the intimation to the Station House Officer, Mogalthur Police Station. Ex.A10, which is the xerox copy of the hospital intimation, dated 07.06.2007, received from Help Hospitals, Vijayawada, was marked subject to objection, since it was a xerox copy. He further stated that he received death intimation on 11.07.2007 from the same hospital and sent the same to the Mogalthur Police Station. The lower court, by considering that the original of Ex.A10 was not marked, did not rely on Ex.A10.

[1] 2009(5) ALD 202

9. But in the considered opinion of this court, a case under a beneficial legislation has to be approached with an appreciation, which is favourable to the victim. *Prima facie*, it appears that the death intimation was given by the hospital. No motives can be attributed to the Doctor, who was examined as PW3, and no motives can be attributed to PW4, who is a public servant. Unless death intimation had been received by PW4, he cannot be expected to be in possession of the Xerox copy of the same.

10. Hence, from the above fact, it has to be understood that the death intimation was sent to the police of Mogalthur Police Station, for registration of a case. However, the lapse of the police in not registering the case cannot operate to the detriment of the victims, when *prima facie* it can be seen that the matter was intimated to the police. Even otherwise, if the death intimation was not given to the police, it would only amount to the lapse of the hospital authorities, which also cannot be permitted to operate to the detriment of the victims. However, it can be stated in this case that the death intimation was given to the police station under Ex.A10. Ex.X1, which is the treatment summary marked through PW3, also speaks about the fact that the deceased was admitted with a history of a fall from a running bus, due to skid. Hence, without any doubt, it can be said that the accident occurred on 06.06.2007 and the death of the deceased is due to the injuries sustained by him in the said accident.

11. As regards, the driving licence of the driver of the crime vehicle, the court below placed the burden of proving the same on the petitioners, which is completely against the spirit of the rulings rendered by the apex court in several cases. The court more than many times observed that the claimants would not be in a position to secure the documents pertaining to the vehicle, which is involved in the accident. The insurer though took a plea that the driver did not have valid driving licence, did not go even one step further to prove the same. The counsel contends that he filed a memo into the court. But a Memo cannot be accepted as a piece of evidence. The obligation on the part of the insurer is to call upon the owner to produce the driving licence, which is not fulfilled in this case.

12. The counsel for the appellants relies on the following rulings:

1. *Skandia Insurance Co. Ltd., v. Kokilaben Chandravadan and others*[2]:

   In this case it was held that the owner is not liable where accident caused by an unlicensed person when licensed driver employed by the owner left the vehicle unattended contrary to express or implied orders of the owner. The facts of this case totally differ from the above facts. Hence, the said ruling cannot be appreciated vis-à-vis the facts of this case.

---

[2] (1987) 2 SCC 654

2. *Sohan Lal Passi vs. P.Sesh Reddy and others*[3]*:*

The facts of this case also differ from the facts of the case on hand. In the said case, the owner of the bus authorised his driver to drive the bus to carry passengers but the driver allowed the clearer of the bus to drive it when the accident took place.

3. *United India Insurance Co. Ltd., vs. Lehru and others*[4]*:*

In this case, the apex court held that merely showing that the person driving at the time of accident was not duly licensed, is not sufficient. But the facts of the said case also differ from the case on hand as it pertains to a case of a driver having a fake licence. In the said circumstances, the Apex Court held that when an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them

[3] (1996) 5 SCC 21
[4] (2003) 3 SCC 338

is valid or not. Thus, where the owner has satisfied himself that the driver has a licence and is driving competently, there would be no breach of Section 149(2)(a)(ii).

But, however, by the discussion on this aspect, this court already observed that it is the burden of the insurer to call upon the owner to produce the driving licence and on fulfilling such condition alone, an adverse inference is permitted to be drawn against the owner of the vehicle. Hence, in this case, the owner having not fulfilled the said condition, it has to be concluded that the driver of the vehicle had valid driving licence. Mere fact that he was charge sheeted under Section 188 of the Act, does not relieve the insurer of the said burden. The finding in the charge sheet cannot be considered as a conclusive proof of a fact. The reasons for chargesheeting the driver for not holding the driving licence may be many. Even if he holds a license and does not produce the licence at the time of accident, he would be charge sheeted for the said offence.

13. Hence, in view of the above, this court opines that the judgment of the court below cannot be sustained.

14. The court below did not make any assessment of the compensation under issue No.2 as it was inclined to dismiss the claim petition based on the finding given by it under issue No.1.

15. In view of the foregoing discussion, while setting aside the judgment of the court below, the matter is remitted to the court below to decide the second issue.

16. Accordingly, the MACMA is partly allowed and the matter is remitted to the court below.

As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

____

T. RAJANI, J

August 8, 2018
LMV