THE HON'BLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A.No.1945 of 2010

JUDGMENT:

Having been aggrieved by the order dated 04.08.2009 passed in M.V.O.P.No.186 of 2008 on the file of the Motor Accidents Claims Tribunal-cum-V Additional District Judge, Rayachoty, awarding compensation of Rs.2,77,500/- to the 1st respondent herein (i.e., the claimant in the aforementioned O.P) in respect of the injuries received by him in the accident dated 31.05.2006, and making the appellant and the 2nd respondent herein i.e., owner of the offending mini lorry, to pay such awarded amount to the claimant, the present appeal is filed by the Divisional Manager, United India Insurance Company Limited, Kadapa.

The facts which led the appellant to file the present appeal are briefly stated as under:

The 1st respondent-Palagari Bharat, who is aged about 16 years, made a claim through his mother - Rangappa Nagamani, for compensation of Rs.5,00,000/- in respect of the injuries received by him in the accident dated 31.05.2006, as against the 2nd respondent, owner of the mini lorry bearing No.A.P.03 U 3244 and the appellant herein with whom the aforementioned lorry had insured. His case as pleaded in the claim petition is that on 31.05.2006 while himself and his friend were returning from Diguvarajugaripalli of Sambepalli Mandal on a motorcycle bearing No.A.P.04 E 1690 driven by his friend, when their motorcycle reached near

Narayareddipalli on Rayachoty-Chittoor main road, a lorry bearing No.A.P.03 U 3244 driven by its driver in high speed in a rash and negligent manner came and dashed against the motorcycle on which they were proceeding on the left side of the road and as the result of it, the friend of the claimant by name Raghavendra Rao died on the spot and the claimant sustained fracture to his right leg apart from injuries all over the body. After the accident, the claimant was shifted to Government hospital, Rayachoty for treatment and from there to S.V.R.R. hospital, Tirupathi. He also took treatment in C.M.C. hospital at Vellore, for a period of two months. Though he incurred huge expenditure towards treatment and other incidental expenses, there was no improvement in his condition and he became disabled permanently on account of fracture injury received to his right leg.

The owner of the offending lorry failed to respond to the notice sent to him and it was only the appellant with whom the offending lorry was insured contested the case. It was contended by the appellant before the Tribunal that there was no negligence on the part of the driver of the Mini lorry bearing No.A.P. 03 U 3244 and that the accident occurred only due to the negligent driving of the motorcycle bearing No.A.P. 04 E 1690 by the friend of the claimant, who was a minor, and had no valid and effective driving licence to drive the motorcycle as on the date of the accident. It was further contended by it that without establishing that the accident occurred due to the negligent driving of the Mini lorry bearing No. A.P. 03 U

3244 by its driver, the claimant would not be entitled to get any compensation from this appellant.

Based on the above pleadings, the Tribunal framed the following issues:

1. Whether the claimant received injuries in the pleaded accident due to rash and negligent driving of the driver of the mini lorry bearing No.A.P.03 U 3244 of the 1st respondent?
2. Whether the driver of the 1st respondent's vehicle was having valid and subsisting driving licence at the time of accident?
3. Whether the claimant is entitled for compensation and if so for what amount and from whom?
4. To what relief?

On behalf of the claimant, P.Ws.1 to 3 were examined and Exs.A1 to A6 were marked. The claimant was examined as P.W.2, his mother was examined as P.W.1 and that Dr.C.Sanjeevaiah, who issued the disability certificate of the claimant, was examined as P.W.3. No oral or documentary evidence was adduced by the appellant-Insurance Company before the Tribunal.

The Tribunal, on appreciation of oral and documentary evidence, awarded compensation of Rs.2,77,500/- to the claimant and made the appellant and the owner of the offending lorry liable to pay such compensation to him together with interest at 7.5% per annum from the date of filing of the petition till the date of realization.

Feeling aggrieved by the award so passed by the Tribunal, the appellant-Insurance Company, with whom the offending lorry was insured, came before this Court by preferring the present appeal.

It was contended by the learned Standing Counsel appearing for the appellant that the Tribunal had erroneously held that the appellant-Insurance Company liable to pay compensation to the claimant. Though it was not established by the claimant that the driver of the offending lorry had valid and subsisting driving licence as on the date of accident, the Tribunal made the appellant liable to pay compensation along with the owner of the offending lorry instead of holding that the terms and conditions of the policy were breached by the owner of the lorry. The Tribunal failed to appreciate the fact that the claimant who travelled in the motor cycle as a pillion driver was a minor and that the rider of the motorcycle was also a minor. The Tribunal ought not to have allowed the claim made by the claimant for compensation as the motorcycle was driven by a minor in deviation of the provisions of the Motor Vehicles Act.

I have perused the award impugned in this appeal, so also the evidence on record.

Among the witnesses examined, P.W.1, the mother of the claimant, was not the eyewitness to the accident. P.W.2, the claimant, deposed that on 31.05.2009 while himself and his friend Raghavendra Rao were returning to Rayachoty from Diguvarajugaripalli on a motorcycle bearing No.A.P. 04 E 1690 after having their lunch, when they were proceeding slowly on the left side of the road near Narayanareddigaripalli, the offending mini lorry bearing No.A.P. 03 U 3244 came in their opposite direction with high speed in a rash and negligent manner, dashed against their motorcycle and due to the said impact, himself and his friend Raghavendra Rao fell down from the motorcycle and the lorry ran over his friend and it resulted his instantaneous death. In the said accident, the claimant received fracture injury to his right leg apart from the injuries all over the body, and was shifted to Government hospital, Rayachoty and from there he was shifted to S.V.R.R. hospital, Tirupathi and from there he was taken to C.M.C. hospital, Vellore for treatment. As the evidence of P.W.2 was corroborated on all aspects with the contents of Ex.A1, certified copy of the F.I.R., and Ex.A3, certified copy of the Charge Sheet, the Tribunal held that the negligent driving of the lorry by its driver was main cause for the occurrence of the accident and it resulted instantaneous death of the friend of the claimant, and injuries to the claimant. Though a specific plea of defence was taken by the appellant-Insurance Company that the driver of the offending mini lorry had no valid and subsisting driving licence as on the date of the accident and that the policy conditions were violated by the owner of the mini lorry by handing over his lorry to a person, who did not possesses valid and subsisting driving licence to drive it, did not choose to adduce oral or documentary evidence. No proof as such was produced by the appellant before the Tribunal that the policy conditions were breached by the owner of the lorry by handing over his lorry to a person who did not possess valid and subsisting driving license as on the date of the accident. The driver of the mini lorry was chargesheeted for the offences punishable under Sections 338 and 304-A of I.P.C. and under Sections 134 (a) and (b) read with Section 187 of M.V. Act, but not for contravening the provisions of Section 3 of the M.V. Act which was punishable under Section 181 of the M.V.Act. The appellant-Insurance Company without production of any iota of evidence in support of its plea of defence that the driver of the offending lorry had no valid and effective driving licence at the relevant point of time, sought for complete absolvation of its liability to pay compensation on the ground of breach of conditions of the policy. Therefore, the Tribunal had rightly held that the appellant-Insurance Company failed to prove that the driver of the offending vehicle was not having valid driving licence at the relevant point of time and accordingly not accepted its contention.

The claimant to prove the nature of injuries received by him in the accident and the treatment taken in the C.M.C. hospital at Vellore, produced the certified copies of wound certificate (Ex.A2) and the case sheet (Ex.A5). It is evident from the recitals of Ex.A2-Wound Certificate issued by the Civil Assistant Surgeon, Community Health Centre, Rayachoty, that the claimant sustained four injuries, of which two are simple and the rest of them are grievous in nature and they are received in a road traffic accident. The claimant has got examined Dr.C.Sanjeevaiah as P.W.3 to prove the disability attained by him due to receiving of fracture injury to his right leg. As per Ex.A5-Case Sheet issued by the C.M.C. hospital, Vellore, the claimant under went surgery for correction of fractured right leg.

Though the disability of the claimant is assessed by P.W.3 at 60%, the Tribunal seems to have assessed the disability at 30% discarding the evidence of P.W.3 and no reasoning is given by the Tribunal as to why the evidence given by P.W.3 cannot be relied upon. Though this Court does not agree with the own assessment made by the Tribunal as to the disability attained by the claimant and to the fracture injury received to his right leg, it refrains from going into the said aspect as the claimant has no grievance on the assessment of disability made by the Tribunal. Since the claimant was a non-earning member, the Tribunal fixed the notional income of the claimant at Rs.15,000/- per annum as per II schedule of the M.V. Act. and multiplied it with the appropriate multiplier '16' (as the claimant was aged about 16 years by the date of accident) on duly deducting 30% of it, assessed the loss of future earnings at Rs.72,000/- (Rs.15,000/- x 16 = Rs.2,40,000/- x 30/100 = Rs.72,000/-). Taking note of the contents of Ex.A2-Wound Certificate where the nature of injuries received by the claimant, were mentioned, the Tribunal awarded compensation of Rs.25,000/- for each grievous injury and Rs.2,500/- for each simple injury).

It has been rightly observed by the Tribunal that the genuineness or correctness of Ex.A6-Medical Bills cannot be doubted as no evidence as such is adduced by the appellant-Insurance Company disputing the same. Therefore, there cannot be any hesitation for this Court to hold that the compensation amount of Rs.1,40,000/- awarded under the head of medical expenditure and extra nourishment is fair and reasonable. The Tribunal has also rightly awarded compensation of Rs.6,000/- under the head of transportation and Rs.4,500/- under the head of attendant charges taking into consideration of the evidence on record that the claimant is provided with treatment in various hospitals as an inpatient. Therefore, the same is hereby confirmed. The Tribunal rightly awarded a total compensation of Rs.2,77,500/- (Rs.72,000/- + Rs.50,000/- + Rs.5,000/- + Rs.1,40,000/- + Rs.6,000/- + Rs.4,500/-).

Upon close scrutiny of the evidence on record, this Court finds no valid reason to hold that the award under challenge is suffering from any factual or legal infirmities.

In the light of the aforementioned discussion, the appeal is dismissed and the order of the Tribunal passed in M.V.O.P.No.186 of 2008 on the file of the Motor Accidents Claims Tribunal-cum-V Additional District Judge, Rayachoty, is hereby affirmed.

Miscellaneous applications, if any pending in this appeal, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

12.10.2018
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