

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.1865 OF 2011

JUDGMENT:

The Oriental Insurance Company Limited, which is arrayed as 2nd respondent in M.V.O.P.No.546 of 2009 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XX Additional Chief Judge, City Civil Court at Secunderabad (for short 'the Tribunal'), preferred the instant appeal having got aggrieved by the said award, whereby and whereunder, the Tribunal has granted a sum of Rs.6,00,000/- with interest at 7% per annum as against Rs.6,00,000/- claimed under Section 163 (A) of the Motor Vehicles Act, 1988 (for short, 'the Act'), to the respondents 1 and 2 who are the claimants before the Tribunal.

2. The appellant herein is the 2nd respondent, while respondent No.1 and 2 are the petitioners/claimants and respondent No.3 is the owner of the crime vehicle i.e. lorry bearing No.AP 29 U 4911 that involved in the accident, in the O.P. before the Tribunal.

3. The facts, in brief, are that on 18.09.2009 at about 5.30 P.M while the deceased proceeding on his Hero Honda Motor Cycle bearing No.AP 10 AH 6196 along with his friend from Hyderabad towards Yadagirigutta side and when he reached near Renuka Yellamma Temple at Bhongir Village outskirts, he stopped the bike and parked the same on the left side of the road and visited the temple and ready to move from there,

suddenly one Lorry bearing No.AP 29U 4911 coming from Hyderabad towards Bhongir in a rash and negligent manner with High Speed dashed the deceased. As a result of which the deceased fell down on the road and the lorry ran over him by which he received severe fractures of head injuries and other multiple injuries to all over the body and succumbed to injuries on the spot. The deceased was hale and healthy at the time of accident. Due to the sudden death, the petitioners were put to mental shock and agony. The deceased was the only bread winner of the family and they do not have any other source of income to maintain themselves. The deceased was having old aged mother and father to look after and they became destitute. The police registered a case in Cr.No.236/2009 under Section 304 A of IPC against the driver of the crime vehicle. Respondent No.1 is the owner of the crime vehicle and respondent No.2 is the insurer of the crime vehicle, as such both the respondents are jointly and severally liable to pay the compensation to the petitioners.

4. The 1st respondent remained *ex parte* before the Tribunal. The 2nd respondent-The Oriental Insurance Company Limited filed counter denying the narration and manner of the accident described in the petition. It is further stated that there is no rash and negligent driving of the lorry driver; that the driver of the lorry had no valid driving licence to drive the vehicle; that the police did not file any charge sheet against the crime vehicle; and that the 2nd respondent

is not liable to pay any compensation and finally sought to dismiss the claim petition.

5. Basing on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, on behalf of the petitioners PWs1 to 3 were examined and marked Exs.A1 to A7. On behalf of the respondents no witnesses were examined, but Ex.X1 was marked.

6. The Tribunal, on issue No.1, basing on the evidence of PW1 to PW3 and Exs.A-1-Certified copy of FIR and A-2-Certified copy of inquest report, Ex.A3-certified copy of Post Mortem Examination report; Ex.A4-certified copy of charge sheet; Ex.A5-certified copy of scene of offence panchanama, held that due to rash and negligent driving of the driver of the lorry, the accident had occurred and held issue No.1 in favour of the petitioners.

7. Concerning quantum of compensation, on issue No.2, the Tribunal has taken Rs.6,000/- per month as income of the deceased and deducted 1/3 towards personal expenses arrived at Rs.4,000/- per month and by applying '15' as multiplier, calculated loss of dependency at Rs.7,20,000/. Since the petitioners themselves restricted their claim to Rs.6 lakhs, the Tribunal granted Rs.6,00,000/- to the petitioners as compensation making responsible the respondents 1 and 2 in the claim petition to pay the compensation, jointly and

severally with interest @ 7% per annum from the date of petition till the date of deposit. 9.

8. Aggrieved by the aforementioned order, the 2nd respondent-The Oriental Insurance Company Limited, preferred the instant appeal contending that the Insurance Company is not liable to pay compensation since according to Ex.A4-charge sheet the deceased was at fault as he was in drunken state; and that due to his negligence the appellant insurance company cannot be made liable to pay compensation. He also submits that the compensation granted is also excessive. In support of his contention he relied on the Judgment of the Supreme Court in ***National Insurance Company Limited v. Sunitha and others***¹.

9. On the other hand learned counsel for respondents 1 and 2 who are the claimants before the Tribunal submits that the application claiming compensation was filed by the respondents under Section 163A of the Act, as such, the claimants need not prove negligence on the part of the driver of the offending vehicle. More so, the Insurance Company has not led any evidence regarding contributory negligence. In support of his contentions he relied on the Judgments in ***Syed Sadiq and others v. Divisional Manager, United India Insurance Company Limited***² and ***United India***

¹ (2012) 2 Supreme Court Cases 356

² (2014) 2 Supreme Court Cases 735

Insurance Company Limited v. Myadada Latha and others³.

10. In this case, PW2 who is an eye witness to the accident deposed that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. Basing on his evidence and the documents Exs.A1 to A5 the Tribunal held Issue No.1 in favour of the claimants.

11. PW2 in his cross examination stated as follows;

“It is not true to suggest that the deceased friend Rajesh was unsteady movement due to semi unconscious state due to consumption of alcohol fell down under the middle of the passing lorry. It is not true to suggest that there is no negligence on the part of the lorry driver but only the negligence of my deceased friend. It is not true to suggest that I am deposing false to help the claimants. It is not true to suggest that the Insurance Company is not liable to pay the compensation.”

12. Basing on the evidence of PW2, the Tribunal came to a conclusion that the accident occurred due to the rash and negligent driving of the driver of the Lorry.

13. The Insurance Company has not led any evidence regarding contributory negligence before the Tribunal and in this appeal also the Insurance Company disputed only the manner in which the accident occurred but not the occurrence of the accident. It is to be seen that even the

³ 2013 (2) An.WR 453 (AP)

Judgment of Criminal Court is not binding on the Civil Court. The Tribunal only after considering Ex.A4-charge sheet coupled with other evidence came to a conclusion that the accident occurred due to involvement of the offending vehicle.

14. In the Judgment relied on by the appellant in ***National Insurance Company Limited v. Sinitha and others' case (supra 1)*** at para 38 the Supreme Court held as follows;

“38. The Tribunal in holding that the rider Shijo was responsible for the accident, had placed reliance on copies of the first information report, post-mortem certificate, scene mahazar, report of inspection of vehicle, inquest report and final report. Neither of these in our considered view, can constitute proof of ‘negligence’ at the hands of Shijo. Even if he was responsible for the accident, because the motorcycle being ridden by Shijo had admittedly struck against a large laterite stone lying on the tar road. But then it cannot be overlooked that the solitary witness who had appeared before the Tribunal had deposed that this has happened because the rider of the motorcycle had given way to a bus coming from the opposite side. Had he not done so there may have been a head-on collision. Or it may well be that the bus coming from the opposite side was being driven on the wrong side. This or such other similar considerations would fall in the realm of conjectural determination. In the absence of concrete evidence this factual jumble will remain an unresolved tangle.”

In the same Judgment at para 40 it was held as follows;

“In the present case, only one witness was produced before the Tribunal. The aforesaid witness appeared for the claimants. The witness asserted that while giving way to a bus coming from the opposite side, the motorcycle being ridden by Shijo hit a large laterite stone lying on the tar road, whereupon the motorcycle overturned and the rider and the pillion rider suffered injuries. The petitioner Insurance Company herein did not produce any witness before the Tribunal. In the absence of evidence to contradict the aforesaid factual position, it is not possible for us to conclude that Shijo was ‘negligent’ at the time when the accident occurred. Since no pleading or evidence has been brought to our notice (at the hands of the learned counsel for the petitioner), it is not possible for us to conclude that the inverse onus which has been placed on the shoulders of the petitioner under Section 163-A of the Act to establish negligence, has been discharged by it. We therefore, find no merit in the first contention advanced at the hands of the learned counsel for the appellant.”

15. In view of the aforesaid Judgment, since the Insurance Company has not led any evidence in respect of contributory negligence, I do not see any reason to hold otherwise than that of the findings held by the Tribunal.

16. In ***Syed Sadiq and others v. Divisional manager, United India Insurance Company Limited***, which was relied on by the learned counsel for the respondents/claimants, at para 29 the Apex Court held as follows;

“29. On the matter of extent of contribution to the accident, it is held by the Tribunal that the appellant claimants herein should have taken utmost care while moving on the highway. Looking at the spot of the accident, the Tribunal concluded that the appellant claimants were moving on the middle of the road which led to the accident. Therefore, the Tribunal concluded that though the tractor has been charge-sheeted under Sections 279 and 338 IPC, but given the facts and circumstances of the case, the appellant claimants also contributed to the accident to the extent of 25%. The High Court without assigning any reason concurred with the findings of the Tribunal with respect to contributory negligence. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the appellant claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellant claimants in the accident is not proved by the respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory negligence, which has been upheld by the High Court, is set aside.”

17. As regards other contentions regarding quantum, learned counsel for the appellant states that 50% of the income has to be deducted since deceased is a bachelor. Even if that is taken into account, 50% of the income comes to Rs.3,000/- per month and Rs.36,000/- per annum. As per the law laid down by the Hon'ble Supreme Court in **Sarla**

Verma v. Delhi Transport Corporation ⁴ , the multiplier '18' has to be taken, by which the loss of dependency works out to Rs.6,48,000/-. As the claimants/respondents restricted their claim to Rs.6,00,000/-, the Tribunal granted Rs.6,00,000/- as compensation. Thus, if the law laid down by the Hon'ble Supreme Court in the recent past is applied, certainly, the petitioners would be entitled to more than what was granted by the Tribunal. In that view of the matter, there is no merit in the instant appeal.

18. Accordingly, the instant appeal is dismissed, confirming the award and decree passed by the Tribunal in all respects, including the rate of interest. No order as to costs.

19. As a sequel, miscellaneous applications, if any, pending in this appeal shall stand closed.

A.RAJASHEKER REDDY, J

09.02.2018
tk.

⁴ (2009) 6 SCC 121