HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.No.1400 OF 2010

JUDGMENT:

1. The appellant-Insurance Company aggrieved by the Judgment and Award dated 14.09.2009 passed in MVOP.No.319 of 2006 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Vizianagaram, awarding compensation of Rs.80,000/- with interest at 6% per annum from the date of petition till the date of realization against appellant and respondents 2 and 3 herein jointly and severally and directing them to deposit the compensation amount within one month and on such deposit, permitting the first respondent/claimant to withdraw Rs.40,000/- in the first instance and directing to keep the balance amount in fixed deposit of nationalized bank besides awarding Advocate fee of Rs.500/-, preferred this appeal.

2. The contention of the appellant-Insurance Company is that the Tribunal failed to see that the auto bearing No. AP 35 U 573 in which the claimant and others were travelling was overloaded at the time of accident and as a result of which, the driver lost control and dashed the insured auto bearing No. AP 35 U 0180; and that at the time of accident, the driver was not having valid and effective driving licence and there by violated the terms and conditions of the policy. Further contended that the claim petition is bad for non-joinder of the necessary and proper parties,

i.e. driver, insurer and insured of the auto in which the claimant was travelling at the time of accident.

3. The claim of the first respondent/claimant is that on 31.10.2005 she boarded auto bearing No. AP 35 U 573 at Vizianagaram to go to Kumili, and when the said auto reached near Vudikalapeta at about 4.00 PM, another auto bearing No.AP 35U 0180 came in opposite direction, in rash and negligent manner, with high speed, without following the traffic rules and without blowing horn, and dashed against auto bearing No. AP 35 U 573 in which she was travelling; as a result of which, she suffered both simple and grievous injuries. Her right hand middle finger and index finger were amputated and sufferred fracture of another two fingers and injuries all over the body. Immediately after the accident, she was admitted in K.V.Srinivasa Rao Hospital, at Vizianagaram and after first aid, she was shifted to Government Hospital, Vizianagaram for treatment. She was in patient for one month and thereafter discharged with an advise to follow up treatment. She spent huge amount for treatment and extra nourishment.

The first respondent/claimant was 55 years, hale and healthy and used to earn Rs.80/- per day as a labour. Due to the injuries sustained in the accident, she lost her earning power.

4. Respondents 2 and 3 contested the claim petition before the Tribunal and filed their counter affidavit denying the

averments made in the petition. It is stated that the accident was due to the rash and negligent driving of the driver of auto bearing No. AP 35 U 573. The claimant has to prove her age, income and avocation and also injuries sustained in the accident. The compensation claimed is on higher side and that there is no loss of earning. There is no rash and negligent driving on the part of the driver (second respondent) of auto bearing No. AP 35 U 0180 and that he was having valid and effective driving licence and the same was in force as on the date of accident. The Insurance Company, appellant herein, is liable to pay the compensation.

5. The appellant herein also filed counter affidavit before the Tribunal contesting the claim petition and contended that the accident was due to rash and negligent driving of the driver of offending auto bearing No.AP 35U 0180. The driver of the auto bearing No. AP 35 U 573 in which the claimant was travelling was over loaded and as such he was unable to control the auto and dashed the auto bearing No. AP 35 U 0180, and though the second respondent tried to avert the accident, but due to negligence of the opposite auto driver, the accident took place. Therefore it (Insurance Company) is not liable to pay any compensation. If at all she (claimant/first respondent herein) is entitled for any compensation, it is from the driver, owner and insurance company of the auto bearing No. AP 35U 573. The claimant did not file any record with regard to her income, avocation etc supporting her claim. The compensation claimed is excessive.

6. In view of the pleadings advanced on either side, the Tribunal framed the following issues for trial:

1. Whether the accident occurred due to rash and negligent driving of Auto No. AP 35U 0180 by its driver ?
2. Whether the petitioner is entitled to any compensation, if so, from which of the respondents ?
3. To what relief ?

7. During the trial, the first respondent/claimant examined P.Ws.1 and 2 and got marked Ex.A.1 to 6 on her behalf. On behalf of the appellant and respondents 2 and 3, R.Ws.1 and 2 were examined and Exs.B.1 to B.6 were got marked.

8. Now the point that arises for determination is:

"whether the findings of the Tribunal and consequential Award and Decree can be sustained ?"

Learned Counsel for the appellant-Insurance Company contended that the accident was due to over loading of auto bearing No. AP 35U 573 and further that the driver(second respondent herein) of auto bearing No. AP 35 U 0180 did not possess valid and effective driving licence at the time of accident.

9. The first respondent/claimant filed her evidence affidavit reiterating the facts and pleadings urged in the claim petition. According to her, on 31.10.2005 she boarded auto bearing No. AP 35 U 573 at Vizianagaram to go to Kumili and when the said auto reached near Vudikalapeta at about 4.00 pm, another auto bearing no A.P 35U 0180 came in opposite direction,

in rash and negligent manner, at high speed, without following the traffic rules and without blowing horn, and dashed the auto in which the claimant was travelling. Ex.A.1 is the true copy of FIR, Ex.A.2 is the true copy of charge sheet and Ex.A.4 is the true copy of MV Inspector report. Ex.A.1 FIR was registered on the complaint lodged by one Kanchi Krishna Murthy on 2.11.2005 at 0900 hours with regard to the accident occurred on 31.10.2005 and the same was registered as crime No.78 of 2011. In Ex.A.2 charge sheet it was specifically stated that the head constable-P.Dharma Rao recorded the statement of the complainant in the Government Hospital on 31.10.2005 and registered the same as Crime No. 78 of 2005`. The registered number of the Auto AP 35 U 0180 was specifically mentioned that the driver of the said auto drove the same in rash and negligent manner, with high speed, without following the traffic rules and without blowing horn and dashed the auto bearing No. AP 35 U 573 in which the claimant was a passenger. After thorough investigation, the Investigating Officer filed charge sheet Ex.A.2 against the driver of auto bearing No. AP 35 U 0180, second respondent herein alleging that the accused driver of auto bearing No. AP 35U 0180 drove the same in rash and negligent manner while proceeding towards Vizianagaram and dashed the auto bearing No. AP 35 U 573 in which the claimant was a passenger. The Motor Vehicle Inspector in Ex.A.4 report stated that the accident was not due to any mechanical defect of auto bearing No. AP 35 U 0180. Having considered the evidence of P.W.1 and Exs.A.1, A.2 and A.4, I am of the considered view that the Tribunal after elaborate discussion of the documentary evidence in Exs.A.1,A.2 and A.4 read with oral evidence of P.W1 came to the right conclusion that the accident occurred due to the rash and negligent driving of the driver (second respondent herein) of auto bearing No. AP 35U 0180 with high speed, without following traffic rules and without blowing horn and while so, he dashed the auto bearing No. AP 35 U 573 in which the claimant was the passenger.

Though the appellant-Insurance Company took the plea that there is rash and negligent driving on the part of the driver of auto bearing No. AP 35 U 573, but it did not choose to examine any material witness.

10. R.W.1 is the Manager (legal) in the appellant-Insurance Company, who is not the eye witness to the accident, R.W.2 is the Junior Assistant in RTA Office and P.W.2 is the Civil Assistant Surgeon at Government Hospital, at Vizianagaram, who treated the claimant/first respondent and issued Ex.A.5 disability certificate. Absolutely there is no rebuttal evidence from any angle. In the absence of rebuttal evidence, the Tribunal is perfectly legal and valid in holding that the accident was due to the rash and negligent driving of the driver (second respondent herein) of the auto bearing No. AP 35 U 0180. Such finding of the Tribunal does not suffer from any legal infirmities warranting interference.

11. The further contention of the appellant-Insurance Company is that the claim petition is bad for non joinder of necessary parties. Admittedly, at the time of accident, i.e. on 31.10.2005 at about 4.00 PM, the first respondent/claimant boarded the auto bearing No. AP 35U 573. In view of the clear finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of auto bearing No. AP 35U 0180 and in the absence of any rebuttal evidence therefor, I am of the considered view that the driver, insurer and insured of auto bearing No. AP 35U 573 in which the claimant was travelling at the time of accident are not the proper and necessary parties and the claim petition can be adjudicated without their being added as parties.

12. The next contention of the appellant-Insurance Company is that the driver (second respondent herein) did not possess valid and effective driving licence as on the date of accident. The evidence of R.W.1 was that the driver did not possess valid and effective driving licence at the time of accident. Further he did not issue any policy/cover note in the name of N. Balaramakrishna at any point of time.

During cross examination, R.W.1 admitted that Ex.B.5 is the light motor vehicle driving licence of the second respondent-driver of auto bearing No. AP 35 U 0180 and also admitted that he obtained light motor transport vehicle licence on 6.1.2006 whereas the accident occurred on 31.10.2005. R.W.1 stated that the driver is not having disqualification for obtaining transport driving licence and that the transport driving licence would be issued one year after the issuance of non-transport driving licence. Further admitted that the Insurance Company issued cover note through its agent, based on which, the Motor Vehicle Inspector in Ex.A.4 report noted about the policy in force. It is the evidence of R.W.1 during his cross examination that on verification of the record with cover note number, the policy was not traced out.

13. From the evidence of R.W.1, it is further clear that the Insurance Company issued Ex.B.1 notice to the owner of vehicle (Respondent No.3 herein) which was received by him under Ex.B.2 postal acknowledgment. Ex.B.3 is the cover note copy and Ex.B.4 is the cover note issued by the Insurance Company. EX.B.6 is the copy of Insurance Policy. Thus the evidence of R.W.1 read with Ex.B.1 clearly goes to suggest that the Insurance Company after having knowledge of the accident, issued notice wherein it is stated '*In the said application the vehicle auto bearing registered No.AP 35U 0180 owned by you and it was met with accident on 31.10.2005 at about 4.00 PM. Because of that accident one Kondaru Sanamma (claimant) received grievous injuries. The petitioner was claimed compensation for Rs.2,00,000.*" and requested the third respondent/owner to furnish the original cover-note said to have been issued to him (customer copy) along with payment details within one week. Ex.B.3 is the cover note copy issued in the name of Y.Satyanarayana for the

vehicle–PIAGGIO APE-Pick-up and Ex.B.4 is the cover note issued in the name of Sunkari Padi Naidu for 'only trailer'. Ex.B.6 is the Insurance Policy issued in the name of N.Balaramakrishna, third respondent herein, which was in force from 17.2.2005 to 16.2.2006 for Bajaja auto (Engine No.ALM BLJ 21415, Chasis No. BLK 21293). Thus it shows that the said policy was issued in the name of third respondent for the offending vehicle and the same was in force as on the date of accident.

14. Ex.B.5 is the driving licence issued in the name of Pothayya N, second respondent herein on 3.1.2005 for driving transport vehicle, valid upto 5.1.2009, and for driving non transport vehicle, valid upto 2.1.2025. Ex.B.5 thus clearly shows that the driver was having non transport vehicle driving licence issued on 3.1.2005 and transport vehicle driving licence which was valid upto 5.1.2009 with badge Number 4062. Therefore the Tribunal having considered the documentary evidence vide Ex.B.5 and oral evidence of R.W.1 came to the conclusion that even as per the evidence of R.W.1, the driver of the offending vehicle has got valid driving licence to drive light motor vehicle and ultimately held that the driver of the of the offending vehicle was having valid and effective driving licence. In view of lack of sufficient supporting evidence, the Insurance Company failed to prove that the driver of the offending vehicle was not having valid and effective driving licence. Ex.B.6 is the Insurance Policy which was in force from 17.2.2005 to 16.2.2006 whereas as the accident

occurred on 31.5.2005. Thus the Ex.B.6 was in force as on the date of accident.

15. P.W.2 is the doctor who treated the claimant in the Government Hospital and confronted Ex.A.3 wound certificate, according to which, the first respondent/claimant suffered (1) A laceration on dorsum of right hand, (2) Post traumatic amputation of right hand index finger, (3) Near total amputation of right hand middle finger (4) Fracture proximal phalanx of right and 4th and 5th fingers and (5) fracture metacarpals of right hand 3rd,4th,5th fingers. He clinches that middle finger was badly damaged and amputated and half of the index finger was removed and there are three other fingers which are functioning and therefore the first respondent/claimant was certified to be suffered 40% disability which is partial and permanent in nature. P.W.2 further deposed that the disability of 40% is to the right hand and there is no difficulty in lifting weights and regarding grip, and that 40% disability is not to the entire body. The first respondent/claimant was treated in the Government Hospital. Considering the evidence of P.W.2 and documentary evidence vide Exs.A.3 and A,.5, the Tribunal rightly awarded Rs.80,000/- which is just and reasonable. The manner and method of awarding compensation by the Tribunal does not suffer from any legal infirmities warranting interference.

16. In the facts and circumstances discussed hereinabove, I am of the considered view that the Tribunal while

considering the oral and documentary evidence, came to the right conclusion that due to the rash and negligent driving of the driver (second respondent herein) of auto bearing No. AP 35 U 0180 with high speed, without following the traffic rules and without blowing horn, it dashed the auto bearing No. AP 35U 573 in which the first respondent/claimant was the passenger. In view of the clear finding that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No. AP 35U 0180, the driver, insurer and insured of auto bearing No. AP 35 U 573 are not the proper and necessary parties and the claim petition can be adjudicated in their absence. Further, the Tribunal having considered Ex.B.5 and evidence of R.Ws.1 and 2 rightly came to the conclusion that the driver of the offending vehicle bearing No. AP 35U 0180 was having valid and effective driving licence as on the date of accident and that the Ex.B.6 insurance policy issued by the appellant-Insurance company was in force as on the date of accident. Further, having considered the injuries suffered by the first respondent/claimant vide ExA.3 and disability of 40% vide Ex.A.5, the Tribunal rightly awarded the compensation of Rs.80,000/- against the appellant-Insurance Company, second respondent-driver and third respondent-owner jointly and severally, which is just and reasonable. Thus the findings and conclusions of the Tribunal are legal and valid and do not suffer from any legal infirmities warranting interference.

17. For the foregoing discussion and in the result, the appeal is dismissed with costs, confirming the Award and Decree

dated 14.09.2009 passed in MVOP.No.319 of 2006 on the file of learned Chairman, Motor Vehicle Accident Claims Tribunakl-cum-District Judge, Vizianagaram.

18. Consequently, the appellant-Insurance Company is directed to deposit the compensation amount awarded by the Tribunal, if not already deposited, within one month from the date of receipt of a copy of judgment after adjusting the amount if any already paid or deposited.

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

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

JUSTICE N. BALAYOGI

DATE: 26th JULY, 2018.
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