

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

M.A.C.M.A.NO.801 OF 2012

JUDGMENT:-

Heard Sri A.Ramakrishna Reddy, learned counsel for the appellant/Insurance Company and Sri P.Radhive Reddy, learned counsel for the respondents.

2. This appeal is filed questioning the order, dated 23-02-2010 in O.P.No.293 of 2008 passed by the Motor Accidents Claims Tribunal, (District Judge), Nizamabad.

3. According to the case in the lower court, on 02-12-2007 when the deceased was walking on road N.H.7 at about 7.45 P.M near Suddapally village shivar, a motor cycle bearing No.MH 38A-9306 driven by its driver in a rash and negligent manner came from behind and hit the deceased, as a result of which, he sustained fatal injuries and later he died in the hospital. Claiming compensation for the said accident, the application is filed by the two wives and children of the deceased. 1st respondent is the owner-cum-driver of the offending vehicle and 2nd respondent is Insurance Company. The matter was contested in the lower court by the 2nd respondent-Insurance Company alone. For the petitioners, Pws.1 to 3 were examined and Exs.A-1 to A-4 were marked. For the respondents, RW.1 was examined and Exs.B-1 and B-2 got marked. After trial,

the lower court ordered compensation of Rs.3,29,000/- along with interest and costs(advocate fee). Questioning the same, the present appeal is filed.

4. Learned counsel for the appellant submits that the driver of the vehicle, which is involved in the accident, did not have a valid licence at al. It is his contention that despite the issuance of a legal notice, the 1st respondent could not produce any details about the driving licence. Therefore, he submits that there is a violation of the conditions of the policy and that the Insurance Company is not liable to pay any compensation at all.

5. In reply thereto, the learned counsel for the respondents submits that the issue was already raised in the lower court and he draws the attention of this court to para No.16 of the judgment of the lower court, wherein the Issue No.2 was decided. While dealing with the Issue No.2, the court below cited the judgment of this court in *United India Insurance Company Limited, Gajuwaka vs. Nekkalla Ammathalli and others*(¹), wherein this court has held that when the insurer claims that the driver of the offending vehicle did not have any valid and effective driving licence as on the date of accident, the burden was on the Insurance Company to prove the same by cogent and acceptable evidence. The learned counsel for the

¹ 2010(1) T.A.C. 196(AP)

respondents draws the attention of this court to para.17 of the judgment, wherein it was mentioned that no documents have been produced by the respondents to show that the driver was not having a valid licence. The learned counsel also points out that the appellant did not take steps to summon the records from the local transport authority office to prove the existence or non-existence of the licence. It is his contention that the appellant-Insurance Company failed to discharge the burden cast upon it.

6. The next issue on which both the learned counsel were at issue is about the quantum of compensation. This court, after hearing both the learned counsel, notices that the court below came to a conclusion that the age of the deceased should be taken as 48 years on the basis of the inquest report and P.M report. The multiplier that is adopted was "13". This is from the Second Schedule of Section 163-A of Motor Vehicles Act,1988. Although it is argued that this is not correct, this is as per Schedule of the M.V.Act only and, therefore, there is no apparent error that is visible to interfere.

7. This court, after hearing both the learned counsel, is of the opinion that the impugned judgment is a reasoned order passed after considering the facts and law on the subject. No grounds are made out to interfere with the same. Hence, the appeal is liable to be dismissed.

Accordingly, the Appeal is dismissed. No costs.
Miscellaneous Petitions pending, if any, shall stand closed in
consequence.

D.V.S.S.SOMAYAJULU,J

25-10-2018
TSNR

