

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.2471 of 2006

JUDGMENT:

1 This appeal, under Section 173 of the Motor Vehicles Act, is filed by the second respondent – insurance company, challenging the Judgment and award dated 01.08.2006 passed in M.V.O.P.No.256 of 2005 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge Medak at Sangareddy wherein and whereby an amount of Rs.3,90,000/- was awarded as compensation to the petitioner as against the claim of Rs.4.00 lakhs.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they were arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly, are as follows:

4 On 23.02.2002 one Peddi Sriram Reddy (hereinafter referred to as 'the deceased') and one Venkata Krishna Reddy were proceeding to their village on a scooter bearing No.AP-28/AA-5496. The deceased was pillion rider and the said Venkata Krishna Reddy was rider of the said scooter. When they reached the outskirts of Kondapaka village, the rider of the scooter drove the same in a rash and negligent manner and fell down on the road. Immediately after the accident, the deceased was shifted to Apollo hospital wherein he succumbed to the injuries on 24.02.2002 while undergoing treatment. The accident occurred due to the rash and negligent driving of the rider of the scooter bearing No.AP-28/AA-5496 against whom, the Station House Officer, Kukkunoor Police Station

registered a case in Cr.No.21 of 2002 for the offences punishable under Sections 337 and 304-A of IPC. At the time of accident, the deceased was aged about 24 years and used to earn Rs.20,000/- p.m. The petitioner, who is the mother of the deceased, is dependant on the income of the deceased. The scooter bearing No.AP-28/AA-5496, which belongs to the first respondent was insured with the second respondent as on the date of accident, vide cover note No.110268, valid up to 30.05.2002. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.4.00 lakhs with interest @ 12% p.a. to the petitioner.

5 First respondent filed counter denying the various averments made by the petitioner in the claim petition, inter alia contending that his scooter bearing No.AP-28/AA-5496 was insured with the second respondent as on the date of accident, therefore, the second respondent alone has to pay the compensation, if any, to the petitioner. This respondent was having valid driving licence as on the date of accident. Hence the petition may be dismissed so far as this respondent is concerned.

6 Second respondent filed counter denying the various averments made in the petition, inter alia contending that the accident occurred due to the negligence on the part of the deceased himself. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. The petitioner is not entitled to claim compensation against this respondent unless the petitioner establish that the rider of the scooter bearing No.AP-28/AA-5496 i.e. the first respondent was having valid and effective driving licence as on the date of accident. Hence the petition may be dismissed.

7 Basing on the above pleadings, the Tribunal framed the following issues:

- i. Whether accident occurred due to rash and negligent driving of driver of crime vehicle?
- ii. Whether the petitioner is entitled for compensation? If so, at what quantum and from whom?
- iii. To what relief?

8 During the course of enquiry, on behalf of the petitioner, the petitioner examined herself as P.W.1 and got marked Exs.A.1 to A.8. On behalf of the respondents none was examined, but copy of the insurance policy was marked as Ex.B.1.

9 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the rider of the scooter bearing No.AP-28/AA-5496 which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.3,90,000/- with interest at 7.5% p.a from the date of filing of the petition till the date of deposit and directed the respondent Nos.1 and 2 to deposit the same jointly and severally. Feeling aggrieved by the said judgment and award of the Tribunal, the second respondent – insurance company preferred the present appeal.

10 Now the points that fall for consideration in this appeal are:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the scooter bearing No.AP-28/AA-5496, which resulted in the death of the deceased?
2. Whether the amount of compensation awarded by the Tribunal is just and reasonable or not?

3. Whether the Ex.B.1 policy does not cover the risk of pillion rider?

Point No.1:

11 As per the testimony of P.W.1, on the date of accident, her son i.e. the deceased and one Venkata Krishna Reddy were proceeding on the scooter bearing No.AP-28/AA-5496. When the scooter reached the outskirts of Kondapak village, the rider of the scooter drove the same in a rash and negligent manner due to which the accident occurred. In the cross examination of P.W.1, nothing was elicited to shake her testimony so far as the manner of accident is concerned. A perusal of Ex.A.1 – certified copy of FIR, Ex.A.3- certified copy of charge sheet goes to show that the accident occurred due to the rash and negligent driving of the rider of the scooter bearing No.AP-28/AA-5496. As per the recitals of Ex.A.2 – certified copy of inquest panchanama and Ex.A.4-certified copy of scene of offence panchanama and Ex.A.6 – certified copy of post-mortem examination report, the deceased died due to the injuries sustained in the accident that occurred on 23.2.2002. A perusal of Ex.A.6 – certified copy of MVI report clearly reveals that there was no mechanical defect in the crime vehicle. None was examined on behalf of the respondents to disprove the case of the petitioner so far as the factum and manner of accident is concerned. The oral testimony of P.W.1 is supported by the recitals of Ex.A.1, A.2, A.3, A.5 and A.6. The finding recorded by the Tribunal is based on the oral and documentary evidence much less legally admissible evidence. The Tribunal has assigned reasons much less cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the Tribunal on this aspect.

12 Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the scooter bearing No.AP-28/AA-5496, which resulted in the death of the deceased. The point is answered accordingly.

Point No.2:

13 By the date of accident the mother of the deceased was aged about 45 years. The Tribunal has taken the multiplier 10 to assess the loss of dependency. A perusal of Ex.P.7 reveals that the deceased was working as contract employee in a mining company in Oman. Except the self serving testimony of P.W.1, there is no other evidence on record to prove that by the time of accident the deceased used to earn Rs.20,000/- p.m. Ex.A.8 is the passport of the deceased showing the entries of Sultan of Oman. The fact remains that by the date of accident the deceased was an employee of a mining company in Oman. Basing on the documentary evidence available on record, the Tribunal has assessed the income of the deceased as Rs.4,500/- p.m and deducted 1/3rd towards personal expenditure of the deceased. In such circumstances the deceased may contribute Rs.3,000/- p.m. to his family members. Thus the loss of dependency comes to Rs.3,000/- X 12 X 10 = Rs.3,60,000/-.

14 The Tribunal awarded an amount of Rs.15,000/- towards love and affection and Rs.15,000/- towards loss of estate. Thus, the Tribunal awarded an amount of Rs.3,90,000/- to the petitioner under the above heads, which is just and reasonable. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the appellant that

the amount of compensation awarded by the Tribunal is on higher side. Accordingly, the point is answered.

Point No.3:

15 First respondent is the owner of the scooter bearing No.AP-28/AA-5496, which was insured with the second respondent under Ex.B.1 policy with effect from 31.05.2001 to 30.05.2002. Hence Ex.B.1 policy is in force as on the date of accident i.e. 23.02.2002. It is not in dispute that Ex.B.1 is a comprehensive policy, which covers the risk of a pillion rider. Therefore, the second respondent has to indemnify the liability of the first respondent.

16 The Tribunal considered the scope of Ex.B.1 policy in right perspective. The findings recorded by the Tribunal are supported by the recitals of Ex.B.1 policy. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the appellant that there is no statutory or contractual obligation on the part of the second respondent to indemnify the liability of the first respondent. In that view of the matter, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Accordingly, point No.3 is answered.

17 In the light of the foregoing discussion, I see no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal. The appeal lacks merits and bonafides and hence the same is liable to be dismissed.

18 In the result, the appeal is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this miscellaneous appeal, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 12th April, 2018.

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