THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 472 OF 2011

JUDGMENT:

This appeal is filed by the appellants/claimants under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the award and decree dated 21.10.2010 passed by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur, in M.V.O.P.No.1428 of 2009, wherein and whereby the Tribunal granted compensation of Rs.3,95,000/- against the claim of Rs.4 lakhs for the death of one Shaik Fakeer Saheb (hereinafter referred to as 'the deceased') in the accident occurred on 26.06.2009.

2. The appellants/claimants filed the claim petition against the respondents 1 and 2 alleging that on 26.06.2009 while the deceased was traveling in the auto of the 1st respondent and when the auto reached near the bus stand at Maddalakatta Village, on account of the rash and negligent driving of the driver of the auto, the driver lost control of the vehicle and thereby it turned turtle, as a result the deceased and others sustained injuries and the deceased was died on 08.07.2009 while undergoing treatment at Government Hospital, Guntur.

On account of the death of the deceased, the appellants/claimants lost their dependency and claimed compensation of Rs.4 lakhs with costs and interest stating that the deceased was hale and healthy prior to the accident, he was aged about 40 years at the time of accident and he was working as a lorry driver and used to earn Rs.3,000/- per month.

3. The 1st respondent filed counter denying the averments of the claim petition.

4. The 2nd respondent while denying the averments of the claim petition stating that the though crime vehicle was insured with the 2nd respondent, the driver had no valid and effective driving licence as on the date of accident and that there is a breach of contract, and thereby the 2nd respondent is not liable to pay compensation.

5. Based on the pleadings, the Tribunal framed the following issues:

1) Whether the accident occurred due to rash and negligent driving of the driver of auto bearing No.AP27X 4990?

2) Whether the petitioners are entitled for compensation, and if so, to what amount and against whom?

3) To what relief?

6. On behalf of the claimants, the wife of the deceased was examined as PW1 and Exs.A.1 to A.6 were marked. On behalf of the respondents, RWs 1 and 2 were examined and Exs.B.1 to B.3 got marked.

7. The Tribunal, based on the evidence available on record, came to the conclusion that since the claim petition was filed under Section 163-A of the Act, negligence need not be pleaded and proved. The Tribunal also held that the deceased was a professional driver as per Ex.A.6 driving licence and the income and occupation need not be disputed. The Tribunal deducted 1/3rd towards personal expenses instead of 1/4th as the claimants are six in number. The Tribunal applied the multiplier "15" as the age of the deceased was 41 years as per second schedule appended to Section 163-A of M.V. Act and held that the claimants are entitled for compensation of Rs.3,60,000/- towards loss of dependency. In addition to it, the Tribunal granted Rs.15,000/- towards loss of estate and Rs.5,000/- towards funeral and incidental expenses, and an amount of Rs.15,000/- was granted to the 1st petitioner towards loss of consortium. In all, the Tribunal granted Rs.3,95,000/- towards compensation with interest at 7.5% per annum and the same was apportioned.

8. Sri B.Parameswara Rao, learned counsel for the appellants, mainly contended that the Tribunal ought to have fixed the liability on the 1st and 2nd respondents jointly and severally stating that the crime vehicle was insured with the 2nd respondent. The insured is the owner of the auto. The 2nd respondent/insurer could not be absolved from the liability of payment of compensation. The Tribunal ought to

have directed the 2nd respondent/insurer to pay the compensation amount to the appellants/claimants and liberty could have given to the insurer to recover the same from the insured by applying the principle of 'pay and recovery' and relied on the decisions reported in 1) *United India Insurance Company Limited Vs. Sakhamuri Venkayamma and others*[1], 2) *United India Insurance Company Limited Vs. Annapurna Sandilya and others*[2] and 3) *Gangaram Patel Vs. Mohd. Zaheed Khan and another*[3].

9. The Tribunal, on considering the aforesaid decisions, held that those cases were with regard to the vehicles being overloaded and it cannot be a ground on which the insurance company could avoid the liability. In fact, in this case, the controversy is the driver of the insured was driven the vehicle without valid and effective driving licence and thereby breached the terms and conditions of the policy. Hence, the aforesaid cases have no help to the case of appellants/claimants.

10. For the reasons stated supra and having perused the evidence on record, this Court finds that the driver of the 1st respondent had driven the offending vehicle without valid and effective driving licence and caused the accident. Hence, the Tribunal rightly fixed the liability on the 1st respondent-owner and insured of the crime vehicle. Further, this Court

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[1] 2007 ACJ 1085
[2] 2007 ACJ 1168
[3] 2008 ACJ 2763

finds that there is no irregularity or illegality in the award passed by the Tribunal.

11. The appeal is accordingly dismissed. No order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE M.GANGA RAO

20-09-2018
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