THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.2037 of 2007

ORDER:

This appeal is filed under Section 173 of the Motor Vehicles Act, by the United India Insurance Company Limited-respondent Nos.2 and 4, challenging the judgment and award dated 14.9.2006 passed in M.V.O.P. No.463 of 2005 on the file of the Court of II Additional District and Sessions Judge (Fast Track Court), Medak at Sangareddy.

2. The parties hereinafter will be referred as they were arrayed before the Tribunal, for the sake of convenience.

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

On 06.6.2002, Nayeemuddin (hereinafter referred to as, the deceased) along with others was proceeding towards Sadasivpet in an auto bearing No.AP 23T 7178. When the auto reached near Peddapur Village, driver of a tractor and trailer bearing Nos.AP 23T 7733 and 7734 came in opposite direction and dashed the auto. The deceased sustained grievous injuries on various parts of the body, due to the head-on collision of both the vehicles. The drivers of both the vehicles were responsible in causing the accident. Immediately after the accident, the deceased was taken to Government Hospital, Secunderabad, wherein he died while undergoing treatment. The Station House Officer, Sadasivpet Police Station, registered a case against the driver of the auto bearing No.AP 23T 7178 in Crime No.98 of 2002 for the offence under Section 304A of IPC. By the time of the death, the deceased was aged about 18 years and used to earn Rs.4,000/- per month.

The petitioners are the parents of the deceased. The petitioners are dependants on the income of the deceased. The auto bearing No.AP 23T 7178, which belongs to first respondent, was insured with the second respondent vide policy No.051403/31/02/01229. The third respondent is the owner of the tractor and trailer bearing No.AP 23T 7733 and 7734 and the same was insured with fourth respondent-company vide policy No.MC/H/441177. Therefore, the respondent Nos.1 to 4 are jointly and severally liable to pay compensation of Rs.3,00,000/- to the petitioners with interest and costs.

4. The respondent Nos.1 and 3 remained *ex parte*. The respondent Nos.2 and 4-United India Insurance Company Limited filed counter denying all the averments made in the petition *inter alia* contending that the auto or the tractor-trailer were not insured with this respondent; therefore, this respondent is not liable to pay any compensation to the petitioners. There was no rashness or negligence on the part of the drivers of the vehicles in causing the accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant.

5. Basing on the above pleadings, the Tribunal framed the following issues:

(1) Whether the accident occurred due to the rash and negligent driving of the Tractor & trolley bearing No.AP 23T 7733 and AP 23T 7734 by its driver or by auto driver and caused the death of the deceased?

(2) Whether the claimants are entitled for any compensation, if so, to what amount and from whom?

(3) To what relief?

6. During the course of enquiry, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the respondent Nos.2 and 4–Insurance Company, R.W.1 was examined and Exs.B.1 and B.2 were marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the head-on collision of both the vehicles, and allowed the petition granting compensation of Rs.3,00,000/- as claimed by the petitioners with interest at 7.5% per annum from the date of petition till the date of realization, fastening the liability on respondent Nos.1 to 4 jointly and severally. Aggrieved by the judgment and award passed by the Tribunal, the Insurance Company preferred the appeal.

8. The learned standing counsel for the appellants-respondent Nos.2 and 4 submitted that the Tribunal committed error in applying the multiplier and by taking the age of the mother of the deceased. He further submitted that the drivers of both the vehicles were not having valid and effective driving licences as on the date of the accident; therefore, there is no statutory or contractual liability on respondent Nos.2 and 4 to indemnify the liability of respondent Nos.1 and 3 respectively.

9. The learned counsel for the petitioners-respondent Nos.1 and 2 herein submitted that the Tribunal rightly considered various aspects and awarded just and reasonable compensation. He further submitted that respondent Nos.2 and 4 have failed to establish that the drivers of both the vehicles were not having valid and effective driving licences by the time of the accident. He

further submitted that since the deceased was an unmarried person, the Tribunal had taken the age of mother of the deceased and applied proper multiplier; therefore, it is not a fit case to interfere with the judgment and award passed by the Tribunal.

10. Now the points that arise for determination in this appeal are:

1. Whether the compensation awarded by the Tribunal is excessive and exorbitant?
2. Whether respondent Nos.1 and 3 have violated the terms and conditions of the respective policies issued to them?

Point:

11. As per the finding recorded by the Tribunal, the accident occurred due to head-on collision of both the vehicles, basing on the testimony of P.Ws.1 and 2 and Exs.A1 and A2. The Tribunal has assigned cogent and valid reasons to its findings. The Insurance Company is not challenging the findings of the Tribunal on this aspect. The material available on record clinchingly establishes that the accident occurred due to head-on collision of auto bearing No.AP 23T 7178 and tractor-trailer bearing No.AP 23T 7733 and 7734. I am fully endorsing the finding recorded by the Tribunal on this aspect.

12. As seen from the testimony of P.W.1, the deceased was a bachelor. As per the testimony of P.W.1, she was aged about 42 years by the time of the accident. The respondents have not adduced any evidence to establish that P.W.1 was aged more than 42 years. In order to assess the loss of dependency, the Tribunal applied the multiplier 11.85. In the absence of positive evidence to prove the income of the deceased, some guess work is inevitable. Even by attending coolie work, one may get not less than

Rs.3,000/- per month. The Tribunal deducted 1/3rd of the income towards personal expenses of the deceased. The deceased may contribute Rs.2,000/- per month to his family members. The Tribunal awarded an amount of Rs.2,85,000/- (Rs.2,000 X 11.85 X 12 = 2,84,400, which is rounded of to 2,85,000) towards loss of dependency. The Tribunal also awarded Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. The compensation awarded by the Tribunal under the above heads is just and reasonable.

13. It is the contention of learned counsel for the appellants that the drivers of both the vehicles are not having valid and effective driving licenses as on the date of the accident. To substantiate the same, Senior Assistant of the second respondent-Insurance Company was examined as R.W.1. As per the testimony of R.W.1, the crime vehicles were insured with their company as on the date of the accident and Ex.B.1 policy was in force. Taking into consideration the testimony of R.W.1 and Ex.B1, I am of the considered view that crime vehicles were insured with respondent Nos.2 and 4 as on the date of the accident. The testimony of R.W.1 further reveals that the Insurance Company appointed a private Investigator in order to ascertain whether the driver of the auto was having valid driving licence by the time of the accident. In the cross-examination, R.W.1 in unequivocal terms deposed that second respondent did not file investigator's report. In the absence of investigator's report, it is not safe to place reliance on the testimony of R.W.1, who is in one way interested witness. The petitioners relied on Ex.B.1 Insurance policy issued by the second respondent in favour of the first respondent in respect of the

offending auto was in force as on the date of the accident. The Motor Vehicles Inspector inspected the vehicles on 10.6.2006 and issued Ex.B2 report. A perusal of Ex.B2 clearly reveals that the MVI did not enquire the driver of the auto with regard to his driving licence. If really the driver of the auto was not having valid and effective driving licence as on the date of the accident, the Police might have registered a case against the driver of the auto under the provisions of the Motor Vehicles Act and Rules thereunder. A perusal of the record clearly reveals that the Police registered a case against the drivers of the auto and Tractor-Trailer under Section 304A IPC only. The second respondent did not take any steps to examine the concerned Road Transport Authority to establish that the driver of the auto was not having valid and effective driving licence as on the date of the accident. Absolutely there is no evidence on record to establish that the drivers of the offending vehicles were not having valid and effective driving licences as on the date of the accident so as to absolve the liability of the Insurance Company. The respondent Nos.1 and 3 had not violated the terms and conditions of the policies issued by respondent Nos.2 and 4 in respect of their respective vehicles so as to absolve their liability. Accordingly, the points are answered.

14. In the result, the appeal is dismissed. Miscellaneous petitions, if any pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

April 09, 2018.

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