

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.1177 of 2011

JUDGMENT :

The appellant – Insurance Company/R2 aggrieved by the Award and Decree dated 9.9.2010 in O.P. No.3024 of 2008 on the file of the Motor Accidents Claims Tribunal-cum-XIII Additional Chief Judge (Fast Track Court), City Civil Court at Hyderabad, awarding Rs.3,29,000/- with interest at 6% per annum from the date of filing of the petition till realization with proportionate costs and apportioning the amount of Rs.2,50,000/- to the 1st petitioner and Rs.79,000/- to the 2nd petitioner and holding Respondents 1 and 2 jointly and severally liable to pay compensation to petitioners and directing the 2nd respondent/appellant to deposit the decretal amount within thirty days from the date of the order and permitting the first petitioner to withdraw Rs.50,000/- with interest and directing the remaining amount of Rs.2,00,000/- to be kept in any nationalized bank for a period of five years and permitting the 2nd petitioner to withdraw the entire compensation amount awarded to her with interest and awarding advocate fee at Rs.3,500/-, preferred this appeal, besides other grounds on the grounds that the Tribunal wrongly considered the evidence of P.W.2 and Exs.A1 and A2 and held that the driver of the offending car bearing No.AP 29 N 5670 drove the car in rash and negligent manner and caused the accident and the deceased was earning Rs.5,000/- per month as a watchman in Sri Sai Flower Decoration, Mirjalaguda.

2. It is further contended that the 3rd respondent/driver did not possess valid and effective driving licence to drive the car on the date of the accident. The 3rd respondent/driver thereby violated the terms and conditions of the policy, hence the insurance company is not liable to pay the compensation.

3. The Tribunal failed to consider that as per Ex.A5/B3 Motor Vehicles Inspector suggested the Investigating Officer to file the charge sheet against the 3rd respondent/driver for the offence under Sections 3 and 181 of Motor Vehicles Act. It is further failed to consider that the 3rd respondent wilfully and knowingly that he does not possess the valid and effective driving licence drove the vehicle, thereby violated the terms and conditions of the policy. The tribunal wrongly considered the income of the deceased at Rs.3,000/- per month and deducted 1/3rd towards personal expenses without considering any documentary evidence and also wrongly considered the age of the deceased as 49 years and applied multiplier '13' and awarded the compensation.

4. The respondents/claimants contended that the Tribunal, having considered the oral evidence of P.Ws.1 and 2 and the decision relied by the appellant, came to the right conclusion that the 2nd respondent failed to produce any evidence that the third respondent does not possess valid and effective driving licence and mere mentioning in the M.V.I. report that he did not produce driving licence, does not mean that the driver has no proper licence. The findings of

the Tribunal are legal, valid and do not suffer from any legal infirmities warranting interference.

5. The claim of the respondents in brief is as follows :

On 9.6.2008 A.Darshan Goud, son of late Sathaiah was performing his duties at Sri Sai Flower Decoration, Mirjalaguda as Watchman, at that time a Tata Indica Car bearing No.AP 29 N 5670 driven by its driver with high speed in rash and negligent manner dashed the deceased. Due to sudden impact, the deceased Darshan Goud succumbed to injuries on the spot. It is further contended that at the time of the accident, the deceased was 49 years old and as a Watchman, he used to earn Rs.5,000/- per month and used to contribute the same for the family. The 1st petitioner is the wife and the 2nd petitioner is the unmarried daughter of the deceased and due to sudden demise, their life became miserable.

6. The 1st respondent remained ex parte, whereas the 2nd respondent filed counter denying the averments of the petition and the involvement of the car bearing No.AP 29 N 5670 and also contended that petitioners have to prove age, occupation and income of the deceased and that the driver of the car, at the time of accident, possessed valid and effective driving licence.

7. The Tribunal, having considered the pleadings of both parties, settled the following issues for trial :

1. Whether the accident resulting in death of A.Darshan Goud occurred owing to the rash and negligent driving of driver of car bearing No.AP 29 N 5670?
2. Whether the petitioners are entitled for compensation and, if so, to what amount and from whom?
3. To what relief?

In support of the petitioners, contention, P.Ws.1 and 2 were examined and Exs.A1 to A5 were got marked. On behalf of respondents, R.W.1 was examined and Exs.B1 to B3 were got marked.

8. Now, the point that arises for determination is :

“Whether the Award of the Tribunal suffers from legal infirmities warranting interference?

The main contention of the appellant is that the driver does not possess valid and effective driving licence at the time of accident and in Ex.A5/B3 - M.V.I. Report, the Motor Vehicles Inspector recommended the Investigation Officer to launch a prosecution against the 3rd respondent/driver under Sections 3 and 181 of the Motor Vehicles Act, which was not considered.

Per contra, the claimants contended that absolutely there is no evidence to establish that the driver does not possess valid and effective driving licence at the time of the accident. The wife of the deceased herself was examined as P.W.1. Her clinching evidence is that she is the wife and 2nd claimant is the minor daughter of herself and the deceased.

9. There is no cross-examination of P.W.1 about relationship. None is examined on behalf of the respondents to dispute the dependency of the claimants.

10. The Deputy Manager (Legal) of the 2nd respondent was examined as R.W.1. His evidence is completely silent about the dependency of the claimants and the income of the deceased Darshan Goud. Therefore, the unimpeachable evidence of P.W.1 well established that she is the wife and 2nd claimant is minor daughter of the deceased Darshan Goud and they are dependents on the income of the deceased.

11. With regard to the rash and negligence, there is the evidence of P.W.1. She is not a direct witness to the accident, therefore, the petitioners examined T.Satyanarayana, who is the proprietor of Sri Sai Flower Decoration, Mirjalaguda, as P.W. 2 - eyewitness to the accident, whose evidence is that on 9.6.2008 at 1.00 AM while the deceased Darshan was performing his watchman duty at Sri Sai Flower Decoration, Mirjalaguda, in front of his shop, at that time one Tata Indica Car bearing No.AP 29 N 5670, which was proceeding from Mirjalaguda towards Malkajgiri, driven by its driver, came in rash and negligent manner and dashed the deceased. Ex.A1 is the copy of the F.I.R., Ex.A2 is the charge-sheet, Ex.A3 is the inquest report and Ex.A5/B3 is the M.V.I. Report. In Ex.A1 – F.I.R. there is specific assertion that on 9.6.2008 at 1 AM while the deceased Darshan was attending his watchman duty, the driver of the car bearing No.AP 29 N

5670 came with high speed in rash and negligent manner and dashed the watchman. The Investigating Officer, after thorough investigation, filed Ex.A2 – charge-sheet against the driver of the car finding that on 9.6.2008 at 1.00 hours the driver of the car bearing No.AP 29 N 5670 drove the car in rash and negligent manner with high speed, lost the control and hit the deceased Darshan Goud, who was attending watchman duty at Sri Sai Flower Decoration Shop, Mirjalaguda, besides main road and caused injuries. The M.V.I., who investigated the offending crime vehicle, noted the damages to the vehicle and finally opined that the accident was not due to any mechanical defect of the vehicle.

12. The evidence of P.W.2 supported by Exs.A1, A2, A5/B3 well established that the accident was due to rash and negligent driving of car bearing No.AP 29 N 5670 and absolutely there is no rebuttal evidence adduced by the appellant/2nd respondent to rebut the evidence of P.W.2 and documentary evidence Exs.A1, A2 and A5/B3.

13. In the absence of any such rebuttal evidence, the Tribunal came to the right conclusion that the accident is due to rash and negligence of the driver of the offending car bearing No.AP 29 N 5670 and further find that to contravene the evidence of P.Ws.1 and 2 & Exs.A1 and A2, owner-cum-driver of the car did not put forth any evidence. The findings of the Tribunal are legal, valid and do not suffer from any legal infirmities.

14. With regard to the driving licence, absolutely there is no piece of oral or documentary evidence. R.W.1, the Deputy Manager of the appellant business company in the chief itself admits that the Insurance Company/appellant issued Ex.B1 – copy of the policy which is valid with effect from 25.6.2007 to 24.6.2008 and the policy is in existence. The accident occurred on 9.6.2008, therefore, by the date of the accident, Ex.B1 policy was in force even as per the evidence of R.W.1. In the evidence, R.W.1 deposed that M.V.I. has recommended to file charge-sheet under Sections 3 and 181 of the Motor Vehicles Act, which establishes that the driver had no valid and effective driving licence. It is the duty of the Insurance Company that immediately after it came to know of the accident, to issue notice to the owner/1st respondent directing to produce copy of the policy, copy of the driving licence and other connected material, but the evidence of R.W.1 and the counter are completely silent whether the 2nd respondent/appellant discharged such obligation by issuing such notice. Admittedly, copy of the licence was not produced by the 2nd respondent and it has not issued any notice to produce the driving licence of the driver of the offending lorry at the time of the accident.

15. A perusal of Ex.A5/B3 goes to suggest that the MVI made a note “I/O requested to launch prosecution against accused driver under Sections 3 and 181 of the Motor Vehicles Act” and it is noted that the driver did not produce copy of the driving licence at the time of inspection. In spite of that M.V.I. report, the Investigating Officer,

after thorough investigation, filed Ex.A2/B2 charge-sheet which goes to suggest that the accused Garesh Shankar is a civil contractor and owner of the car No.AP 29 N 5670 and he was arrested on 30.6.2008. The charge-sheet is filed only for the offence under Section 304-A I.P.C. and he was not charged under Sections 3 and 181 as suggested by MVI.

16. The Tribunal, having considered the documentary evidence in Ex.A5/B3, and in the absence of any rebuttal evidence produced by the 2nd respondent/appellant, who having taken the plea that the driver had no valid and effective driving licence at the time of the accident, failed to either examine the owner-cum-driver of the offending vehicle or file any certified copy of the driving licence into the court, held that after completion of the investigation, Investigating Officer filed the charge-sheet against the driver of the offending car for the offence under Section 304 IPC. There is a reference in MVI report – Ex.A5/B3 and Ex.A2/B2 – charge sheet, even then the Investigating Officer filed the charge-sheet against the driver under Section 304 IPC, which clearly establishes that Investigating Officer has obtained necessary documents and he has not found any allegation under Sections 3 and 181 of M.V. Act as referred by MVI. Such finding is legal, valid and do not suffer from any legal infirmities. Further, with regard to the age and income, there is evidence of P.W.1, wherein she clearly stated that the deceased was 49 years old and he used to earn Rs.5,000/- per month. P.W.2 is the owner of Sri Sai Flower

Decorations who is eyewitness to the accident. He also speak that he used to pay Rs.5000/- per month to the deceased as a watchman. During cross-examination, he stated that he has not filed any document to show that the deceased was working under him and he used to pay Rs.5,000/- per month. P.W.1 also admits that she has not filed any document showing that her husband was working as Watchman and earning Rs.5,000/- per month. In the absence of any documentary evidence, the Tribunal, having considered the corroborative evidence of P.Ws.1 and 2, the inquest report under Ex.A3 and charge-sheet under Ex.A2/B2, came to the conclusion that the deceased was Watchman under P.W.2. There is no documentary evidence in proof of income of the deceased, so the Tribunal considered the income of the deceased at Rs.3,000/- per month. Since the claimants are two in number, rightly deducted 1/3rd towards personal expenses of the deceased had he been alive and applied multiplier '13' and awarded the total compensation of Rs.3,29,000/- with subsequent interest at 6% from the date of the petition till the date of realization against respondents 1 and 2 jointly and severally which shall be deposited within 30 days from the date of the receipt of a copy of the order.

17. In the facts and circumstances discussed above, I am of the considered view that the Tribunal, having considered both oral and documentary evidence produced, came to the right conclusion that the accident was due the rash and negligent driving of the driver of the Tata Indica Car bearing No.AP 29 N 5670 who drove the car in rash

and negligent manner and dashed the deceased. Due to sudden impact, the deceased Darshan Goud, who is husband of P.W.1 and father of the 2nd claimant succumbed to injuries on the spot, who was working as watchman under P.W.2. In the absence of any rebuttal evidence, the Tribunal considered the age of the deceased as 49 years and income at Rs.3,000/- per month and deducted 1/3rd towards personal expenses and applied multiplier '13'.

18. In the absence of any evidence produced by the 2nd respondent/appellant, the Tribunal has rightly held that the 2nd respondent/appellant failed to prove that driver of the offending vehicle was not having valid and effective driving licence by the time of the accident. Though MVI in Ex.A5/B3 suggested the Investigating Officer to launch prosecution against the driver for the offence under Sections 3 and 181 of M.V. Act, in the absence of any material, the Investigating Officer, after thorough investigation, filed the charge-sheet for the offence under Section 304 I.P.C. and such a suggestion is based on non-production of the driving licence by the driver which is not conclusive proof of non-possessing of driving licence, therefore the finding of the Tribunal that the appellant failed to establish that the driver does not possess valid and effective driving licence at the time of the accident, is legal, valid and do not suffer from any legal infirmities warranting interference.

19. In the result, the appeal fails and it is accordingly dismissed with costs while confirming the Award and Decree dated

9.9.2010 in O.P. No.3024 of 2008 on the file of the Motor Accidents Claims Tribunal-cum-XIII Additional Chief Judge (Fast Track Court), City Civil Court at Hyderabad. The appellant/2nd respondent is directed to deposit the compensation amount, after deducting the amount if any already paid/deposited, within 30 days from the date of receipt of a copy of the order. On such deposit, claimants 1 and 2 are permitted to withdraw their share of amount as apportioned by the Tribunal.

20. Advocate fee is fixed at Rs.2,500/-.

05th June, 2018
skmr

JUSTICE N.BALAYOGI

