**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**M.A.C.M.A.No.2730 OF 2007**

**JUDGMENT:**

The present appeal is preferred by respondent No.2 – The National Insurance Company Limited in M.V.O.P.No.289 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Karimnagar, aggrieved over the order and decree, dated 18.06.2007, passed in the said O.P., whereby and whereunder, a sum of Rs.1,55,500/- was awarded as compensation to the respondents 1 and 2 for the death of a boy of 8 years old, who is the son of respondent Nos.1 and 2 herein, petitioners – claimants in the O.P.

2. The appellant is respondent No.2, whereas respondent Nos.1 and 2 are the petitioners and respondent No.3, who is the owner of the Jeep that involved in the accident, in the O.P. before the Tribunal.

3. The fact-situation would reflect that on 13.02.2005 at 11 a.m., the deceased boy was coming by walk to the agricultural well where his parents were working and on the way when he reached near agricultural well of Rajaiah of Annaram Village, the Jeep bearing No.ADH 9180 driven by the 1st respondent, dashed against the deceased boy due to which the deceased sustained head injury and died on the spot. On a complaint lodged by the 2nd petitioner, the

Manakondur Police registered a case in Cr.No.24/05 under Sec.304 A IPC. After completing the investigation, the police filed charge sheet which was taken on file in CC.No.272/2005 on the file of Addl.Judicial Magistrate of First Class, Karimnagar.

4. The petitioners, being the parents, filed claim petition stating that due to the untimely death of the deceased, they have lost their dependency during their old age and they have lost love and affection and that since the 1st petitioner has undergone tubectomy surgery in the Area Hospital at Yadagirigutta, there is no chance for the petitioners to have the children in future and therefore claiming compensation of Rs.2,50,000/- with interest @ 18% p.a.

5. The 1st respondent-owner of the Jeep has not filed any counter. The 2nd respondent filed counter denying the petition averments including the manner of accident, age, income and occupation of the deceased. He also denied that the 1st respondent is holding valid driving licence and contended that the claim of the petitioner is highly excessive and that there is no rash and negligent driving on the part of the 1st respondent.

6. Basing on the said pleadings, the Tribunal has framed following three issues.

1. Whether the accident had occurred due to rash and negligent driving of the vehicle bearing No.AHD 9180, by the 1st respondent?
2. Whether the petitioners entitled to recover compensation and if so to what amount and from whom?
3. To what relief?

7. During enquiry, on behalf of the petitioners, PWs.1 to 3 were examined and Exs.A1 to A7 were marked. On behalf of the respondents, RWs.1 & 2 were examined and Exs.B1 to B4 were marked.

8. The Tribunal, on appreciation of evidence on record, recorded finding on issue No.1 in favour of the petitioners. On issue No.2, while deciding the liability of respondents, basing on the evidence of RWs1 and 2 that as per their record the driving licence do not pertain to the 1st respondent and since the petitioners have no acceptable evidence to establish that the 1st respondent was having valid driving licence, the Tribunal has held that there was violation of terms and conditions of the policy and fixed the liability of the 2nd respondent only to the extent of no fault liability and the remaining amount of compensation is payable by the 1st respondent exclusively.

9. The Tribunal, taking the income of the deceased at Rs.15,000/- per annum as per the second schedule to Section 163A of the Motor Vehicles Act and by deducting 1/3

of the amount towards personal expenses arrived at Rs.10,000/- (15,000 – 1/3) as contribution to the family, and applying multiplier '15', arrived at Rs.1,50,000/- towards compensation for the death of the deceased besides granting Rs.2,500/- towards Loss of Estate; Rs.2,000/- towards funeral expenses and Rs.1,000/- towards transportation, thus, making a total of Rs.1,55,500/-, with interest at 7.5% per annum, and apportioned the same amongst the petitioners.

10. It is the aforesaid order which is under challenge in the present appeal by the appellant – insurer.

11. Learned counsel for the appellant-Insurance company submits that though the Tribunal held Issue No.2 in favour of appellant that the appellant is liable only to the extent of no fault liability and the remaining amount of compensation is payable by the 1st respondent, but while ordering the OP, fixed the liability on the appellant as well as 3rd respondent herein jointly and severally which is erroneous. He also submits that the Tribunal has taken the income of the deceased at Rs.15,000/- per annum, though the deceased was 8 years old and there is no income earned by him.

12. On the other hand, learned counsel appearing for respondents 1 and 2 submits that even in case of fake driving licence produced by the driver, the Tribunal should have

directed the appellant Insurance Company to pay and recover the same. In support of his contention he relied on the Judgments in ***National Insurance Company Limited v. Swaran Singh and others*** [1]***, Manuara Khatun and others v. Rajesh Kr.Singh and Others***[2] and the Judgment rendered by the Supreme Court in ***Pappu and Others v. Vinod Kumar Lamba and another in Civil Appeal No.20962 of 2017.***

13. The Tribunal has taken notional income of the deceased @ Rs.15,000/- p.a. taking schedule II of M.V.Act and assessed the contribution to the family at Rs.10,000/- p.a. and adopted '15' as multiplier. In view of the above this Court is of the opinion that the Tribunal has not committed any error in arriving such conclusion and granting compensation. As far as liability of the appellant/2nd respondent is concerned, no doubt RW2 was examined by the appellant who has categorically stated that Ex.B4-driving licence, do not pertain to the 1st respondent. The finding of the Tribunal also is that there is no valid driving licence as on the date of the accident which amounts to violation of terms and conditions of policy. But, though the Tribunal in respect of fixation of liability gave finding that the 2nd respondent is only liable to the extent of no fault liability, but, at the operative portion

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[1] 2004 (2) ALD 36 (SC) = 2004 (2) ALT 14 (SC)
[2] AIR 2017 SC 1204 = 2017(2)ALD 65

directed both the respondents to deposit the compensation, which is erroneous.

14. The Judgment relied on by the respondents 1 and 2 in ***National Insurance company v. Swaran Singh's case (supra)*** the Supreme Court at point No.X of para 106 held as follows;

> "X. Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal."

15. The Judgment relied on by the respondents 1 and 2 in Civil Appeal No.20962/2017 the Apex Court at para-15 held as follows;

> "15. In the present case, the owner of the vehicle (respondent No.1) had produced the insurance certificate indicating that vehicle No.DIL-5955 was comprehensively insured by the respondent No.2 (Insurance Company) for unlimited liability. Applying

> the dictum in the case of ***National Insurance Company (supra),*** to subserve the ends of justice, the insurer (respondent No.2) shall pay the claim amount awarded by the Tribunal to the appellants in the first instance, with liberty to recover the same from the owner of the vehicle (respondent No.1) in accordance with law."

16. In the Judgment relied by respondents 1 and 2 in ***Manuara Khatun's case (supra),*** the Supreme Court at para 22 held as follows;

> "22. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (Respondent No.3) they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-Respondent No.3) to first pay the awarded sum to the Appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)- Respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of **Saju P. Paul's case** quoted supra."

17. In view of the law laid down by the Supreme Court in the aforesaid decision, except the liability fixed by the Tribunal against the appellant/2nd respondent, this Court confirms the award and decree passed by the Tribunal in all respects including the rate of interest.

18. Accordingly the appeal is disposed of modifying the award of the Tribunal in respect of liability fixed against the appellant/2nd respondent. The appellant/2nd respondent– The

National Insurance Company Limited is directed to initially pay the compensation amount as determined by the Tribunal to the respondents 1 and 2 and recover the same from respondent No.3 herein - owner of the offending vehicle in terms of the aforesaid Judgments. No order as to costs.

As a sequel, miscellaneous applications, if any, pending in this appeal shall stand closed.

**A.RAJASHEKER REDDY, J**

08.02.2018
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