

THE HON'BLE Ms. JUSTICE J.UMA DEVI

M.A.C.M.A.No. 1190 OF 2008

JUDGMENT:

Having been aggrieved by the Award dated 27-03-2006 passed in M.V.O.P.No. 192 of 2002 on the file of the learned Motor Vehicles Accidents Claims Tribunal – cum – IV Additional District Judge, Guntur (for short, 'the Tribunal'), granting compensation of Rs.2,02,000/- to the respondents herein (*i.e.* to the claimants in the aforementioned O.P.) in respect of death of the deceased M.Ashok Babu in a road accident dated 01-08-2001, the present appeal is filed by the United India Insurance Company Limited-respondent No. 2.

2. The factual background of the case is briefly stated as under:

The petitioners in O.P.No. 192 of 2002 are the wife, daughter and parents of the deceased M.Ashok Babu. They have laid the claim against the owner and insurer of the motorcycle bearing No. AP 28 Q 4714 alleging that on 01-08-2001 at about 4.25 p.m. while the deceased Ashok Babu was proceeding on left side of the road by walk along with his friend, when reached near Panchayat Office Road, Kanchikacherla, a motorcycle bearing No. AP 28 Q 4714 came with high speed without blowing horn from their behind and dashed the deceased Ashok Babu and his friend and as the result of the aforementioned act of the rider of the motorcycle, the deceased and his friend fell down and the deceased received multiple injuries to his head apart from injuries all over his body. Soon after the accident, the deceased and his friend were taken to Charitasri Nursing Home,

Vijayawada, and there the deceased died while undergoing treatment. The Police of Kanchikacherla registered a case in crime No. 78 of 2001 against the rider of the motorcycle under Section 338 of IPC at the initial point of time, and after death of the deceased, they altered the Section of law to 304-A of IPC.

3. The claimants asserted that the deceased was aged 26 years old by the date of his death; he was hale and healthy and that prior to the accident; he was working as Sales Supervisor in Gandhi Ashram Wholesale and Retail Khadi Cloth Shop, Bose Road, Tenali, and getting salary of Rs.3,250/- per month. It was also asserted by the claimants that they were entirely depending upon the earnings of the deceased and that they lost his love and support due to his premature death.

4. Though the claimants laid the claim for compensation of Rs.4,00,000/-, the Tribunal on overall appreciation of evidence on record awarded compensation of Rs.2,02,000/-. Being aggrieved by the order passed by the Tribunal awarding compensation of Rs.2,02,000/- to the claimants, the insurance company came before this Court by preferring the present appeal.

5. The main contention of learned counsel for the appellant was that the Tribunal erred in holding that there was no bar for the licensee to drive a motorcycle with Ex.X1 license. The Tribunal ought to have held that the person, who drove the motorcycle, at the relevant point of time, was not possessing valid driving license taking into consideration of the evidence given by R.W.2 who was an employee in R.T.A. Office at

Vijayawada. The appellant though discharged the burden of establishing its contention that the person who drove the motorcycle at the relevant point of time was not possessing valid license to drive the motorcycle which involved in the accident, the Tribunal made it liable to pay compensation along with the vehicle owner.

6. From the above contentions raised by the learned counsel for the appellant, it is understood that the appellant has no grievance in respect of quantum of compensation awarded to the claimants. In the light of the aforementioned contentions raised by learned counsel for the appellant disputing its liability to pay compensation, this Court is of the view that it is wholly unnecessary to go into other aspects such as the findings recorded by the Tribunal regarding negligence contributed to the rider of the motorcycle bearing No. AP 28 Q 4714 which involved in the abovementioned accident. It is also felt that it is not necessary to go into the aspect of quantification of compensation *etc.* The only question which this Court is called up to consider in the light of the abovementioned contentions of the appellant is, whether the Tribunal has committed any error in fastening the liability of payment of compensation as against the appellant- insurance company?

7. The appellant seems to have examined one V.Malli Babu and also the employee in R.T.A. Office at Vijayawada to prove its contention that the rider of the motorcycle was not possessing valid driving license as on the date of accident. It is admitted by R.W.1 in his evidence that they have not given any instructions

to their investigator to inquire into the driving license of the rider of the motorcycle personally and no instructions as such were given to inquire the owner of the vehicle. The other witness whom the appellant examined is the employee of R.T.A. Office at Vijayawada, and through him, Ex.X2 is marked.

8. As per Ex.X2, the rider of the motorcycle is supposed to drive light motor vehicles (transport) only, and there is no restriction that the licensee cannot ride the motorcycle which caused the accident. The Tribunal on appreciation of the contents of Ex.X2 driving license, where there is no prohibition for the licensee to ride a motorcycle, has given a finding that the insurance company cannot claim complete absolution of payment of compensation. The Tribunal has rightly fastened the liability as against the appellant along with respondent No. 1- owner of the vehicle by making them liable to pay compensation jointly and severally. It appears from the material on record that this Court *vide* order dated 16-07-2007 in M.A.C.M.A.M.P.No. 3506 of 2007 ordered for stay of suspension of the award passed by the Tribunal on the condition of deposit of entire compensation amount by the appellant, and *vide* order dated 23-04-2008 in M.A.C.M.A.M.P.No. 2553 of 2008, this Court permitted the major claimants to withdraw 50% of their proportionate shares together with interest and costs from out of the amount deposited by the appellant without furnishing any security.

9. In the light of my aforestated finding, that the Tribunal cannot be faulted for fastening of the liability as against the

appellant to pay compensation along with the vehicle owner, therefore, the appeal filed by it deserves to be dismissed.

10. The appeal is accordingly dismissed, and the respondents-claimants are permitted to withdraw their respective shares of compensation together with interest and costs as per the award passed by the Tribunal.

11. Pending miscellaneous petitions if any shall stand dismissed in consequence.

J.UMA DEVI, J.

JSK
Date: 12.10.2018



THE HON'BLE Ms. JUSTICE J.UMA DEVI



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