THE HON'BLE SRI JUSTICE PULLA KARTHIK

M.A.C.MA. No.163 of 2019

JUDGMENT:

This Motor Accidents Civil Miscellaneous Appeal is filed by the Insurance company challenging the order and decree passed in MVOP No.1003/2016 dated 19.10.2018 on the file of Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad (for short "the Tribunal"), wherein the Tribunal had awarded a compensation of Rs.12,79,600/- as against the claim of Rs.15,00,000/- on account of death of Dappu Raju in a motor vehicle accident that occurred on 14.02.2016.

2. The case of the respondent/petitioner in brief:

On 14.02.2016 at about 5.00 PM, while the deceased was proceeding on his motor cycle bearing No. AP 28-DW-0821 near Nagireddypally Gate New Bridge at Nawabpet Mandal, R.R.District, a Tata ACE vehicle bearing No. AP 28-TB-7307 (hereinafter referred to as 'the crime vehicle'), came with high speed and in a rash and negligent manner and dashed the motor cycle from behind, as a result the deceased fell down, sustained head injury and died on the spot.

3. It is pleaded that prior to the accident the deceased was hale and healthy and was a tractor driver in R.K.Farms, Arkalata village, and earning Rs.12,000/- per month.

4. The respondent No.1 and 3 remained exparte before the Tribunal.

5. The appellant/2nd respondent filed its counter before the Tribunal denying the petition averments including the validity of the insurance policy, driving licence particulars of the driver of the crime vehicle, rash and negligence on the part of the driver of the crime vehicle, age and earning capacity of the deceased etc and prayed to dismiss the petition.

6. Basing on the above pleadings, the following issues have been settled for trial:

1. Whether the death of the deceased Dappu Raju, was due to rash and negligent driving of the TATA Ace bearing No. AP 28 TB 7307 driven by its driver?

2. Whether the petitioners are entitled for compensation? If so, to what extent and against whom?

3. To what relief?

7. The Respondent No.1/1st petitioner examined herself as PW1 and got examined PWs 2 and 3 and got marked Ex.A1 to A8 documents in support of their case. The 2nd respondent examined its officer as RW1 and got marked Ex.B2 to B3 documents.

8. On considering the evidence and material on record, the Tribunal was pleased to allow the petition in part and awarded compensation of 12,79,600/- with proportionate costs and interest @ 7.5 % per annum from the date of filing of the petition till deposit as under:

1.	Loss of earnings (6300x12x16)	Rs.12,09,600
2.	Loss of consortium	Rs.40,000
3.	Loss of estate	Rs.15,000
4.	Funeral expenses	Rs.15,000
	Total	Rs.12,79,600

9. Heard both sides and perused the record.

10. The appellant contends that the learned Tribunal had erred in taking the monthly income of the deceased at Rs.6,000/-, in the absence of proof of avocation and income of the deceased. It is further contended that the driver of the crime vehicle is holding only driving license of Light Motor Vehicle (non transport).Hence, respondent had violated the policy conditions by handing over the vehicle to a person who does not have valid driving licence.

11. In contra, the respondent contends that the learned Tribunal had passed an award basing on the oral and documentary evidence on record. It is further contended

that there is no error in the order of the Tribunal and requested to dismiss the appeal.

12. This court has taken note of the submissions made by the respective parties.

13. It is seen from the record that admittedly the driver of the crime vehicle had driving licenses of LMV transport and non transport vehicles. According to RW1, as on the date of the accident the driver of the crime vehicle had driving license to drive non transport LMV only. The appellant except contending that the driver of the crime vehicle had no valid driving license of non transport LMV, did not examine the concerned RTA and did not examine or mark any documentary proof to establish that the driver of the crime vehicle had no valid driving license to drive non transport LMV.

14. The Tribunal relying on the apex court judgment in Mukund Dewangan vs. Oriental Insurance Company Ltd (LAWS (SC) 2017, wherein it was held as follows:

"The effect of amendment of Form 4 by insertion of 'transport vehicle' is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving license for transport vehicle of class of 'light motor vehicle' continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect." In view of the judgment of the Hon'ble Apex court the Tribunal had justified in holding that there is no requirement to separate endorsement to drive transport vehicle of such class without any endorsement to that effect. Hence there is no violation of conditions of the policy.

15. According to PW1, the deceased was working as tractor driver R.K.Farm and earning Rs.12,000/- per month and the salary certificate of the deceased was marked as Ex.A7 issued by R.K.Farm. The Tribunal had

disbelieved the evidence of PW1 and 3, as the petitioner did not file corroborative documentary evidence like wage and attendance register of PW3 to establish that he really paid any wages of Rs.12,000/- per month to the deceased at any time. Hence this court holds that the Tribunal had justified in taking the monthly income of the deceased at Rs.6,000/- by taking into consideration the age of the deceased and as he also had driving licence to drive the motor vehicle LMV.

16. As per the Apex court Judgment in National Insurance company limited Vs. Pranay Sethi and others reported in 2017 ACJ 2700, as the deceased was below 40 years, the claimants are entitled an addition of 40% of the established income of the deceased towards future prospects. Accordingly, the income of the deceased per month has to be calculated as Rs.6,000+2,400=Rs.8,400 and the dependants are within 4 to 6, hence 1/4th of the monthly income i.e. Rs.2,100 is to be deducted towards the personal expenses of the deceased from Rs.8,400/- which

comes to Rs.6,300/- and as per Ex.A8, the age of the deceased was 31 years. Hence appropriate multiplier is 16. Therefore 6,300x12x16=Rs.12,09,600/- is the amount towards loss of earnings. Hence, this court holds that the Tribunal had justified in awarding Rs.12,09,600/- towards loss of earnings, Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, totalling to an amount of Rs.12,79,600/-.

17. In view of the above, this Court does not see any error in the order of the Tribunal. Hence appeal is liable to be dismissed.

18. Accordingly, the Motor Accidents Civil Miscellaneous Appeal is dismissed. There is no order as to costs.

Pending miscellaneous petitions, if any, in this MACMA shall stand closed.

JUSTICE PULLA KARTHIK

Date: 13.09.2022
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