THE HON'BLE JUSTICE G. SRI DEVI

AND

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.Nos.340 of 2020 and 279 of 2021

COMMON JUDGMENT: (Per Hon'ble Justice G. Sridevi)

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.340 of 2020 filed by the owner of the crime vehicle, Eytan Labs Limited, and M.A.C.M.A.No. 279 of 2021 filed by the claimants, seeking enhancement, are directed against the very same award and decree, dated 17.01.2020 passed in M.V.O.P.No.711 of 2014 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Nizamabad (for short "the Tribunal").

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

3. Brief facts of the case are that the petitioners, who are the wife, children and mother of one M.Sai Das (hereinafter referred to as "the deceased"), filed a petition against the respondents, claiming compensation of Rs.75,00,000/- for the death of the deceased, who died in a motor vehicle accident that occurred on 05.09.2014. It is stated that on 05.09.2014

while the deceased was performing vehicle checking duty near Jyothi Milk Company, Bahadurpally, the crime vehicle i.e., Swaraj Mazda bearing No.AP 10 W 5265, owned by respondent No.1 and insured with respondent No.2, being driven by its driver in rash and negligent manner, dashed the deceased, as a result of which, the deceased sustained severe injuries and succumbed to the injuries while undergoing treatment on the same day at Narayana Hrudhayalaya Hospital, Suraram. According to the petitioners, the deceased was aged about 53 years and earning Rs.60,000/- per month as S.I. of Police, Dundigal Police Station. Due to sudden demise of the deceased, the petitioners lost their source of income. Therefore, they laid a claim against respondent Nos.1 and 2.

4. Considering the claim and the counters filed by the respondent Nos.1 and 2, and on evaluation of the evidence, both oral and documentary, the learned Tribunal has partly allowed the O.P. awarding a sum of Rs.62,85,000/- together with interest at 7.5% per annum to be paid by respondent No.1 alone while exonerating the insurance company, respondent No.2 on the ground that it has violated the terms and conditions

of the policy as the driver was not holding valid driving licence as on the date of the accident. Challenging the same, the owner as well as the petitioners filed the present appeals, respectively.

5. Heard and perused the record.

6. It is the contention of the learned counsel appearing for the owner of the vehicle that the driver of the vehicle, Pappu Jha, was having valid driving licence as on the date of the accident, but the learned Tribunal erroneously exonerated the insurance company from the liability of payment of compensation.

7. Learned counsel appearing for the petitioners has contended that the Tribunal wrongly arrived at monthly income as Rs.62,778/- instead of Rs.70,529/- in addition to future prospects. It is further contended that the Tribunal failed to appreciate the fact that the driver of the offending vehicle was having valid driving licence as on the date of accident i.e., Ex.B8, which was issued on 18.12.2007 as non-transport, valid upto 17.12.2030 and transport licence issued on 18.12.2017

valid upto 27.10.2019. Therefore, it is contended that whether driving licence is transport or non-transport, it will not absolve the liability of the insurer in paying compensation to the third parties.

8. Learned Standing Counsel appearing for the Insurance Company submits that the Tribunal has rightly exonerated the insurance company as the insured has violated the terms and conditions of the policy by allowing the person, who was not having valid driving licence at the time of accident. With regard to the quantum of compensation, learned Standing Counsel submits that, infact, the compensation amount awarded by the Tribunal is excessive and exorbitant.

9. A perusal of the impugned order would show that the Tribunal has framed Issue No.1 as to whether the accident occurred on account of rash and negligent driving of Swaraj Mazda bearing No.AP 10 W 5265, to which the Tribunal after considering the oral and documentary evidence adduced by both the parties, has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of

the Swaraj Mazda and has answered in favour of the petitioners and against the respondents. Therefore, we see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle, Swaraz Mazda bearing No.AP 10 W 5265.

10. Insofar as the quantum of compensation is concerned, after considering the age and avocation of the deceased, the Tribunal has rightly taken the income of the deceased at Rs.54,590/- per month and after adding 15% of the future prospects; after deducting 1/4th amount and applying multiplier at '11' the Tribunal has awarded Rs.62,15,000/- apart from awarding Rs.70,000/- under conventional heads. Therefore, we see no reason to interfere with the quantum of compensation awarded by the Tribunal.

11. Insofar as the liability of the insurance company is concerned, while answering the issue with regard to driving licence of the driver of the crime vehicle, the Tribunal at para No.17 held as under:-

"17. … But in this case the owner of the vehicle has given the particulars of the driving licence initially at the time of the accident to the M.V.I., but subsequently when the insurance company through their investigator found that it was a fake licence and was never issued by their office, he came up with other licence particulars in the name of his driver Pappu Jha under Ex.B8, Ex.X3 is also marked through R.W.4. Perusal of the same shows that licence was initially issued to the L.M.V.transport vehicle on 18.12.2007 to Pappu Jha on 05.09.2017 for non-transport vehicle it was valid from 18.12.2010 to 17.12.2030 for transport and it is valid from 28.10.2019 to 27.10.2024. The accident occurred in the year 2014 and the driving licence to the driver was issued in the year 2017. It is for the respondent No.1 to verify the driving licence of the driver before engaging him as a driver and it is patently clear as on the date of engaging driver, he has no valid driving licence and that is why he gave driving licence number wrongly and on verification when it was found to be fake, he came up with particulars mentioned in Ex.X3. Therefore, the driver of the crime vehicle has no valid driving licence as on the date of accident and thus it amounts to clear violations of terms and conditions of the policy, as such, respondent No.2 is not liable to pay compensation and respondent No.1 alone is liable and yhe is directed to deposit amount within one month from the date of the order. …"

12. The submission of the learned counsel appearing for respondent No.1, owner of the offending vehicle that the

Tribunal has misinterpreted the contents of the driving licence which was issued to the driver of the offending vehicle and in furtherance of the submissions, he has furnished the extract of the driving licence which was issued to the driver of the offending vehicle and submitted that according to the validity column, the driving licence issued in favour of the driver on 18.12.2007 is valid upto 17.12.2030 (non-transport) and 27.10.2019 (transport). A perusal of the copy of driving licence issued by the competent licencing authority in favour of the driver of the offending vehicle, would reflect that the authorization to ply the transport vehicle was issued on 18.12.2007 which was valid upto 27.10.2019 and thereafter it was renewed upto 27.10.2024. Admittedly, the accident was occurred on 05.09.2014 and hence, the driver of the offending vehicle was possessing valid driving licence as on the date of the accident and therefore, there is no violation of terms and conditions by the owner of the vehicle. Such being the case, the Tribunal ought to have taken into consideration all these aspects and ought not to have exonerated the insurance company from the liability of payment of compensation. Since, it has been sufficiently established by the owner of the vehicle that the driver of the vehicle was having valid driving licence as on the date of the accident and the policy was in force as on the date of the accident, this Court holds that the insurance company is also vicariously liable to pay the compensation and the findings of the Tribunal in this regard are *set aside*.

13. Accordingly, M.A.C.M.A.No.340 of 2020 is allowed and M.A.C.M.A.No.279 of 2021 is partly allowed as indicated above. Respondent No.2, insurance company is directed to deposit the compensation amount together with interest as awarded by the Tribunal, within a period of two months from the date of receipt of a copy of this judgment. On such deposit, the petitioners are entitled to withdraw their respective shares without furnishing any security. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

G. SRI DEVI, J

SMT. M.G.PRIYADARSINI, J

27.09.2022
Tsr/gkv

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