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

MA.CMA.NO.1204 OF 2014

JUDGMENT

Assailing the order and decree dated 16.01.2006 passed by the court of the Motor Accidents Claims Tribunal (Fast Tract Court), Nizamabad at Kamareddy (Tribunal) in O.P.No.1379 of 2001 in rejecting the claim of the claim petitioner, the present appeal is filed.

2. Heard the learned counsel for the appellant / claimant and the learned counsel for the 2nd respondent – Insurance Company.

3. The case of the claimant is that on 27.09.2001 at about 11.15 am, the claimant along with her daughter were travelling in auto bearing No. AP 11 U 4392 and that when it reached near Laxmi Saw Mills at Nizamsagar Road, Kamareddy at about 11.15 am., the driver of the auto drove it in a rash and negligent manner with high speed, and lost control over it, and due to which, the auto turned turtle, and the claimant received injuries on legs, multiple fractures to ribs, multiple and grievous head injury and other injuries on various part of the body and the other occupants of the auto i.e., her daughter and one Banavath Peer Singh received multiple grievous injuries. That immediately, the claimant and other inmates were shifted to Government Hospital, Kamareddy. The daughter of the claimant was given first aid, and was referred to Hyderabad for further treatment, and on the way to Hyderabad, she succumbed to injuries. The claimant took treatment with private doctor and spent Rs.80,000/-. It is further stated that prior to the accident, she was earning an amount of Rs.6,000/- per month, and on

account of the accident, she became permanently disabled, and lost her total earnings and thus claimed an amount of Rs.2,00,000/-.

4. The respondents filed counter affidavits and denying the averments made in the claim petition sought for dismissal of the same.

5. Based on the above pleadings, the Tribunal framed the following issues for trial:

1. Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No. AP 11 U 4392?
2. Whether the petitioner is entitled for compensation? If so, to what amount and from which of the respondents?
3. To what relief?

6. In support of the case of the claimant, she got examined herself as P.W.1 and got marked Exs.A-1 to A-6.

7. On behalf of the 1st respondent, owner of the vehicle, no evidence was adduced, and on behalf of the 2nd respondent, R.W.1 was examined and Exs.B-1 to B-5 were marked.

8. The Tribunal considering Exs.A-1 and A-2, which are the certified copies of FIR and charge sheet, found that the claimant did not receive any injuries, as such, in Ex.A-2 charge sheet she was shown as eye witness. Though the claimant relied on Ex.A-3 injury certificate, as the doctor was not examined, the Tribunal eschewed the same from consideration. The Tribunal further found that the driver of the crime vehicle was not having valid licence to drive the vehicle. Thus, considering all these circumstances, the Tribunal dismissed the claim petition.

9. Learned counsel for the claimant / appellant submits that it is a fact that the accident in question occurred and in the said accident, the daughter of the claimant, who was travelling with the claimant in the crime auto succumbed to injuries. The claimant also sustained injuries and filed Ex.A-3 injury certified issued by a doctor. Just because the doctor was not examined, it cannot be said that the claimant has not received injuries. Therefore, he sought to grant just compensation for the injuries sustained by the claimant. He further submits that if the driver of the crime auto does not possess valid driving licence, the insurance company, which has issued the policy, cannot deny its statutory liability to a third party, and it has to first pay the amount, and if there is any violation of policy condition, by proving the same, it can recover the same from the owner. With these submissions, he sought to set aside the impugned order and to allow the claim petition.

10. On the other hand, learned counsel appearing for the 2nd respondent – insurance company supporting the impugned order sought to dismiss the appeal.

11. From the material on record, there is no dispute that the accident in question, occurred and as per the contents in Exs.A-1 and A-2, the daughter of the deceased who was travelling in the crime auto, which turned turtle, has sustained injuries, and subsequently succumbed to the injuries, while undergoing treatment. The claimant is also travelling in the same crime auto, which turned turtle. Hence, the inmates of the auto would definitely receive injuries. In the present case, on the ground that the claimant is shown as eye witness, the Tribunal found that she is not an injured. This finding, in my considered view, is perverse, for the reason that P.W.1, filed her chief affidavit stating that she travelled in the crime auto and that she received injuries, and she also filed Ex.A-3 injury certificate issued by a doctor. R.W.1,

who disputed the claim of the claimant, is not an eye witness to the accident, and his evidence in this regard is of no use. In the said accident, as already noted above, the daughter of the claimant died while undergoing treatment. In these circumstances, it has to be taken that claimant sustained injuries as per Ex.A-3 certificate. Further, it is to be seen that it is a beneficial piece of legislation, where strict rules of evidence cannot be made applicable. Hence, the finding of the Tribunal that claimant did not sustain injuries and Ex.A-3 cannot be taken into consideration, cannot be sustained and the same is liable to be set aside.

12. A perusal of Ex.A-3 goes to show that the claimant sustained four simple injuries. Hence, considering the facts and circumstances of the case, I am inclined to grant an amount of Rs.2,500/- each to the said injuries, thus, in all, an amount of Rs.10,000/- is granted to the said four injuries. For pain and suffering, I am inclined to grant an amount of Rs.15,000/-. Thus, in all, the claimant is granted an amount of Rs.25,000/-, with interest at the rate of 7.5 per cent per annum from the date of the claim petition till the date of realization.

13. With regard to liability, there is no dispute that policy of the crime vehicle has been marked as Ex.B-5 was in force as on the date of the accident. The Tribunal held that as the driver was not possessing valid driving licence, Insurance Company cannot be made liable.

14. It is to be seen that the claimant is a third party hence the insurance company cannot deny its statutory liability, and and per the settled legal position as laid down by Apex Court in ***S.IYYAPPAN vs. M/S UNITED INDIA INSURANCE***[1], it has to pay the compensation to

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[1](2013)7 SCC 62

the claimant, who is the third party, and recover the same from the insured, if there is any violation of conditions of the insurance policy.

15. Thus, the 2nd respondent shall pay the above determined amount of compensation i.e., Rs.25,000/- to the claimant with interest at the rate of 7.5 per cent per annum from the date of the claim petition till the date of payment, and recover the same from the insured in the same proceedings initiated by the claimant before the Tribunal.

16. The appeal is accordingly allowed to the extent indicated above.

17. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

M.G.PRIYADARSINI,J

DATE: 29—08—2022

AVS