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

M.A.C.M.A. No.3056 of 2014

JUDGMENT:

The appellants/claimants filed the present appeal aggrieved by the order and decree, dated 15.05.2013 passed in O.P.No.200 of 2012 on the file of the Motor Accident Claims Tribunal-cum-Additional District Judge, Wanaparthy (for short "the Tribunal"), wherein the learned Tribunal dismissed the claim-petition against the Insurance Company.

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 appellants, who are the wife and son of one K.Srinivasulu (hereinafter referred to as "the deceased"), filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.5,00,000/- on account of the death of the deceased, who died in a road traffic accident that occurred on 15.08.2009. It is stated that on 15.08.2009 the deceased went to A.V Narayan Rao Petrol Bunk, for filling the petrol to his Motor bike and while he was going after taking petrol, a Jeep

bearing No.UP 70 AA 8936 came in a rash and negligent manner and dashed the motorbike of the deceased. As a result of which, the deceased has sustained severe injuries and immediately he was shifted to Government Area Hospital, Narayanpet and from there to SVS Hospital, Mahabubnagar, for better treatment but unfortunately, he succumbed to injuries on the way at about 7:30 PM. According to the claimants, the deceased was working as a Mason and Labour contractor and was earning Rs.1,000/- per day and used to contribute the same for the maintenance of the family. Since the accident occurred due to the rash and negligent driving of the driver of the Jeep, the appellants laid the claim-petition against respondent Nos.1 and 2, who are the owner and insurer of the said Jeep bearing No. UP 70 AA 8936, respectively.

4. Before the Tribunal, respondent No.1 remained *ex parte.*

5. Respondent No.2, filed counter denying all the averments in the petition including the manner in which the accident took place and also the age, avocation and income of

the deceased. It is specifically contended that the accident occurred due to negligence of the deceased. It is specifically pleaded that the respondent No.2 has not issued any policy to cover the risk of the offending vehicle.

6. Based on the above pleadings, the Tribunal framed the following issues:

1) Whether the accident occurred on 15.08.2009 at about 4:30 P.M. Opp: Citizen Club, Singarbase street, Narayanpet due to rash and negligent driving of the driver of Mahindra Maxi Jeep No.UP 70 AA 8936?

2) Whether the driver of the offending vehicle was having valid driving license as on the date and time of the accident?

3) Whether the Insurance Policy was in force as on the date and time of the accident?

4) Whether the petitioners are entitled to claim compensation? If so, to what amount and from whom?

5) To what relief?

7. During trial, on behalf of the claimants, P.Ws.1 to 4 were examined and Exs.A1 to A11 and Exs.X1 and X2 documents were marked. On behalf of the respondent No.2, R.W.1 was examined and Ex.X3 document was marked.

8. After analyzing the evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the Jeep bearing No. UP 70 AA 8936 and accordingly awarded an amount of Rs.6,65,000/- payable by the respondent No.1 alone by dismissing the claim against respondent No.2. Challenging the same, the present appeal has been filed.

9. Heard and perused the material available on record.

10. There is no dispute as to the manner of the accident and the rash and negligent driving on the part of the driver of the offending vehicle in causing the accident.

11. Insofar as the quantum of compensation is concerned, though the claimants claimed that the deceased was working as Mason and earning Rs.1,000/- per day, the Tribunal taken the income of the deceased at Rs.6,250/- per month stating that the claimants failed to produce any document to show that the deceased was earning Rs.30,000/- per month. The Apex Court in catena of decisions held that in motor vehicle accident cases, even there is no proof of income the earnings

can reasonably be estimated. Therefore, considering the fact that the deceased was working as mason and he was a skilled worker, this Court is inclined to take the income of the deceased at Rs.6,500/- per month. Apart from the same, the claimants are entitled to addition of 25% towards future prospects, as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***[1]. Therefore, monthly income of the deceased comes to Rs.8,125/- (Rs.6,500/- + Rs.1,625/-). From this, 1/3rd is to be deducted towards personal expenses of the deceased following ***Sarla Verma Vs. Delhi Transport Corporation***[2]. After deducting 1/3rd amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.5,417/- per month. Since the age of the deceased was 48 years at the time of the accident, the appropriate multiplier is '13' as per the decision reported in ***Sarla Verma vs. Delhi Transport Corporation*** (supra). Adopting multiplier '13', the total loss of dependency would be Rs.5,417/- x 12 x 13 = Rs.8,45,052/-. The claimants are also entitled to Rs.77,000/- under the

[1] 2017 ACJ 2700

[2] 2009 ACJ 1298 (SC)

conventional heads as per **Pranay Sethi**'s case (supra). Thus, in all the claimants are entitled to Rs.9,22,052/-.

12. At this stage, the learned Standing counsel for the Insurance Company submits that the claimant claimed only a sum of Rs.6,65,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made, which is impermissible under law.

13. In ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***[3], the Apex Court while referring to ***Nagappa Vs. Gurudayal Singh***[4] held as under:

> "It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation of Rs.5,00,000/- only, but as held in Nagappa vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."

14. In view of the Judgments of the Apex Court referred to above the claimants are entitled to get more amount than

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[3] (2011) 10 SCC 756
[4] 2003 ACJ 12 (SC)

what has been claimed. Further the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimants is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

15. With regard to the liability, it is contended by the appellant-Insurance Company that the driver of the offending vehicle was not having valid driving license and the police also filed charge sheet against the driver of the offending vehicle for the offence under Section 181 of the Motor Vehicles Act. As per Section 149(2) of the Motor Vehicles Act, 1988, heavy burden lies upon the insurer to prove that the driver of the vehicle had no valid driving license at the time of the accident. The evidence of RW-1 does not establish that the driver of the offending vehicle was having a valid and effective driving license as on the date of the accident or not. But it only discloses the fact that the driver has been prosecuted for not producing the driving license. In that light, the evidence of RW-1 is not of much assistance to the insurer in order to establish the fact that the driver of the offending vehicle did

not possess a valid and effective driving license at the time of the alleged accident. This evidence also does not come to the aid of the insurer to discharge its primary duty to establish that there was breach of terms of the policy. As per the principles laid down by the Apex Court in RUKMANI AND OTHERS v. NEW INDIA ASSURANCE CO. AND OTHERS[5], when the insurer had failed to prove the defence raised in the statement of objections, such a plea cannot be accepted. When the police officer or the records are not summoned from the transport authority to establish the fact that the driver of the offending vehicle was not having a valid and effective driving license, then, under such circumstances, it has to be held that the insurer has failed to discharge its burden. Under these circumstances, both the respondents are jointly and severally liable to pay the compensation.

16. Accordingly, M.A.C.M.A. is allowed. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.6,65,000/- to Rs.9,22,052/-. The enhanced amount will carry interest at 7.5% p.a. from the date of passing of award

[5] (1998) 9 SCC 160

by the Tribunal till the date of realization. The claimants are directed to pay Deficit Court Fee on the enhanced amount. Both the respondents are jointly and severally liable to pay the compensation. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSHINI

Date: 01.11.2022
SMK/ESP